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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-second session
Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement*/ submitted by the Society for Threatened Peoples,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 July 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

1. During the past years, the People's Republic of China (PRC) signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This is a welcomed gesture which await evidence of suitable adaptations to bring China's domestic laws and practice into line with the international standards. Present practices transgress international human rights standards, and although improvements have been made in some areas, a more comprehensive scheme for the protection of the Tibetans' human rights must be implemented immediately. Despite the obligation to ensure that all citizens can enjoy freedom of expression and opinion, the PRC has actively violated such rights in Tibet.

2. Recent amendments to the Chinese Criminal Procedure Law failed to implement mechanisms to protect individuals from arbitrary arrest and detention. According to information received by our organisation, the vast majority of arrests of Tibetans were arbitrary; imprisoned on ambiguous charges of "endangering state security." Incarcerated for exercising their basic rights, the prisoners are denied many rights whilst in detainment. Legal proceedings fail to meet international standards or violate China's Constitution; the accused are often denied legal representation, visitation rights and the right to appeal. Tibetan prisoners are routinely subjected to torture in order to extract a 'confession,' and many are detained without any judicial proceeding at all. Cases of disappearance are increasing in Tibet despite the concern expressed by the Working Group on Enforced or Involuntary Disappearance on the "emerging pattern" of disappearances in Tibet.

3. In December 1999, there were 614 known Tibetan political prisoners in Chinese prisons according to the India-based Tibetan Centre for Human Rights and Democracy. The rate of imprisonment for political reasons in Tibet is far greater than in other areas under Chinese rule. It is indicative of the extent of the comprehensive campaign of the Chinese authorities to eliminate any views contrary to official policy in Tibet. The extent of Chinese repression in Tibet is evident from a the New York Times article, "Are Tibetans 'Chinese'?" which mentions how a Tibetan father, Loudeng Chideng " was horrified when the police led away his 10-year-old son because the boy refused to repeat the phrase "I am a Chinese citizen" in school, insisting instead that he is Tibetan." The boy spent four months in prison and was released after his father bribed a police officer who, adding a final insult, warned the father not to let it happen again.

4. Torture constitutes a profound abuse of human rights yet despite being party to various international conventions which outlaw the practice, the Chinese authorities continues to tacitly endorse its use in detention centres and prisons. The ultimate violation of human rights is the termination of life. In 1998, 19 Tibetans died prematurely whilst in detention. Eleven of these deaths resulted from the Chinese suppression of the peaceful demonstrations in Drapchi Prison on 1 and 4 May. Since 1986, the deaths of more than 60 known Tibetans in detainment have been recorded although PRC is a state party to the Convention Against Torture.

5. In August 1999, Gabriel Lafitte from Australia was detained for seven days for visiting after making efforts to visit Dulan in northern-eastern Tibet (now in Qinghai province) slated for a World Bank project to bring 58, 000 Chinese settlers into a Tibetan and Mongolian nomadic homeland. His co-traveller Daja Meston, an American and their translator Tsering Dorje, a Tibetan, were also detained. In an article published in The Age, Gabriel Lafitte described the mental torture he endured during those seven days in these words: "To be under interrogation has a terrible beauty. Like a mathematical equation, a finely crafted novel, the process of being criminalised by a master interrogator has the pristine clarity of a diamond, the rigor of chess…I was held 20 hours a day in a two-bed hotel room that could have been a cheap motel on any rural highway in the modern world, except that it took a team of 20 secret policemen and two women to detain, interrogate and watch everything I and my American fellow researcher did. Minute observation of my moods was, they told me, the reason they took to occupying the only chairs in my room, and sometimes the other bed…Each night, an hour or two after falling asleep, I would be wakened for the interrogation and walked upstairs along the tiled corridor to suite 301, where the grand master awaited me. Against the far wall, under the closed, curtained windows, sat the interrogator, always the same lean, intense, aquiline man with a repertoire of barking laughs to cut through the laboriousness of translation and immediately convey his contempt for my answers."

6. Perhaps the greatest threat to the survival of the religious, culture and national identity of the Tibetan people is the implantation of Chinese settlers into Tibet. If the Chinese authorities are permitted to continue its present policies of population transfer, Tibet may face total marginalisation; a fate that is being experienced today in Inner Mongolia and Eastern Turkestan (Xinjiang).

7. The affects of the deliberate strategy are already apparent. Tibetans are denied complete access to the political sector where important issues affecting them are decided. For example, no Tibetan has held the post of the Secretary of the Communist Party, the highest authority in the so-called "Tibet Autonomous Region (TAR)." As a result, Tibetans are vulnerable to exploitation and negligible policies. Massive economic developments, the catalyst for much of the Chinese settlements, is exploiting the land and destroying the livelihood of the indigenous people. The traditional subsistence economy is being replaced by a "market economy" from which the Tibetans are alienated. Subsistence capabilities are being severely diminished which compromises all other rights.

8. Increased Chinese settlements, discriminatory policies and inadequate social welfare combine to create a hostile economic environment for Tibetans. More than 70 per cent of Tibetans in the "TAR" now live below the poverty line. The destruction of their traditional subsistence economy is creating an economic void for the Tibetan people as they have been alienated from the market economy which has replaced the former. China's economic development programmes are repeatedly failing to alleviate the poverty and new means of financial assistance must be employed.

9. These difficulties are compounded by harsh taxation policies that have been implemented without concession. Tibetans are being greatly affected by these demands which sometimes constitute as much as half their salary. China plans to equate tax revenue from the "TAR" to that of the rest of China and with so many "TAR" residents living in poverty, such an intention is clearly abusive. It is essential that China relax their taxation policies and redirect their annual subsidy for the "TAR" so that the living standard of Tibetan individuals may be raised. Until this is achieved, many basic human rights cannot be assured.

10. Despite being a party to the International Convention on the Elimination of All Forms of Racial Discrimination, domestic laws are failing to provide the Tibetans with an environment free from discrimination. Some government-endorsed practices are blatantly discriminatory, to the detriment of the Tibetans. Tibetans also suffer distinct biases in education and healthcare which greatly affects both their cultural and physical development. The continual influx of Chinese settlers is also resulting in discrimination in the employment sector and the Chinese authorities are yet to introduce steps to rectify these issues. In a Washington Post Service article, John Pomfret reported from Lhasa, that a ware of Chinese job-seekers is threatening to swamp Tibet's culture. In the article he said: "The arrival here of tens of thousands of job-seekers from Chinese ethnic Han majority....is threatening to swamp the culture of 5 million Tibetans...'I am not replacing a Tibetan,' argued Mr. Xie, who came here in pursuit of a fortune two years ago after China relaxed restrictions on travel...Pointing to a teenage Tibetan competitor who was selling scarves of lower quality at the same price, he said, 'We're just beating them at their own game.'"

11. Individual and collective rights abuses continue to challenge the Tibetan people in their daily lives and in the future survival of their religious and cultural identity. The Chinese authorities are obliged to rectify this situation immediately by amending their domestic laws to provide for the protection of all rights. Beijing's signature of the ICESCR and ICCPR requires speedy follow-up with China's ratification of the Covenants. Continual international pressure, therefore, is essential to encourage the Chinese authorities of the need to abide by the obligations to human rights and other international treaties to which Beijing is a party.

12. In conclusion, the Society for Threatened Peoples appeals to the Sub-Commission on the Promotion and Protection of Human Rights to urge the Chinese authorities to immediately end gross and systematic violations of human rights and fundamental freedoms in Tibet. A genuine call by the Sub-Commission for a peaceful negotiated settlement of the Tibetan issue by the Chinese authorities is also urged by our organisation.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement*/ submitted by the International League for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 July 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

1. Six million Tibetans have faced more than 40 years of military occupation and colonial rule by the People's Republic of China. The persistent human rights violations suffered by the Tibetan people merit the Sub-Commission's full attention.

2. Today, there are more than 600 Tibetan political prisoners, according to Tibet Information Network. The incommunicado detention of 10-year-old Gedhun Choekyi Nyima, the Eleventh Panchen Lama, the world's youngest political prisoner, remains a serious concern. Beijing refuses to provide any information on his whereabouts to anyone. Last November, a Chinese language website published an article suggesting that the body of a young boy resembling Gedhun Choekyi Nyima was secretly cremated by members of the Armed Police Force on 19 October 1999. The Chinese authorities denied the report but it has raised anxiety among Tibetans about the boy's safety.

3. Chinese authorities have made conditions intolerable for the free practice of Tibetan Buddhism. In 1998, a senior Tibetan religious figure and member of the Committee of the National Chinese People's Political Consultative Conference and its Standing Committee, Agya Lobsang Thubten Gyurme Gyatso, defected to the United States of America. In testimony before the U.S. Commission on Religious Freedom, the 49-year-old Tibetan lama explained the reasons for his departure.

> "Had I remained in Tibet I would have been forced to denounce the Dalai Lama and my religion and to serve the Chinese Government. This meant also my personal beliefs. As abbot of Kumbum Monastery, I would have been forced to help the government have its choice of Panchen Lama accepted by the Tibetan people. This would violate my deepest beliefs. It was at this point that I knew I must leave my country. So in the end I chose to follow my teacher's guidance. He had advised me that when I turned fifty years old I should leave political life and concentrate on my religious studies. The only possible way I could follow his advice was to escape from what had become almost total Chinese control over my life."

4. Monks and nuns are being coerced to affirm that "Tibet is a part of China" and to denounce His Holiness the Dalai Lama. In 1999, the Chinese authorities also imposed harsher measures to prevent Tibetans from celebrating even the Birthday of the Dalai Lama. For example, the Lhasa city authorities held a rally to commend officials on the handling of "Trung Lha Yarsol" rituals (referring to the Dalai Lama's Birthday). A statement issued on 14 July 1999 even claimed that the birthday rituals also undermined tourism: "The Trung Lha Yarsol' practice is causing immense harm to the creation of a favourable image of Lhasa city. .... It also coincides with the vital tourist season when our guests from abroad as well as from within the country start arriving into Lhasa. Practices like throwing 'tsampa' flour at a passer-by, and blocking the path of travelers, constitute anti-social behaviour that undermines the image and reputation of the city."

5. Tibetans also face serious discrimination. Most skilled jobs are held by Chinese settlers while Tibetans perform most of the menial labour. The rate of unemployment among Tibetan youth is increasing at an alarming rate.

6. Prostitution is on the rise among young Tibetan girls. A recent report, "Social Evils" by Tibet Information Network, found that the total number of brothels in Lhasa municipality is approximately 1,000. In addition, "bars, restaurants, clubs and karaoke bars are often full of girls openly offering their services on the premises, many of which have back rooms where the prostitutes can take their clients."

7. In education, illiteracy remains high despite claims by Chinese authorities to having achieved "earthshaking progress." A 1997 study by the Tibetan Centre for Human Rights and

Democracy found that 96% of Tibetan refugee children interviewed had fled Tibet for reasons of education, generally under the most hazardous conditions and at great financial and personal cost to their family. 93% of these children did not receive any education on Tibetan culture. In addition, efforts started in the early 1980s to reinstate Tibetan as the official language have recently been described by officials in Lhasa as 'not working and at a stalemate'.

8. Chinese authorities signed the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. This has not, however, improved the human rights situation in Tibet. China must now ratify the two Covenants, without further delay, and take concrete steps to improving conditions on the ground.

9. We do welcome recent invitations by Chinese authorities to for foreign delegations, including UN human rights officials, to visit Tibet. We are hopeful that the Office of the High Commissioner for Human Rights will soon receive signatures to the Memorandum Of Understanding as a follow-up to the Memorandum Of Intent which was signed in 1998. Meanwhile, we hope that the Special Rapporteur on Torture will be given full and free access during his official mission to China and Tibet, where torture of political prisoners remains endemic. Similarly, we urge Chinese officials to invite the Special Rapporteur on Religious Intolerance to conduct a follow-up mission to China and Tibet. China must, however, provide independent access to foreign delegations wishing to observe the situation in Tibet. We also express deep concern over China's policy of preventing human rights organizations like Amnesty International and the International Commission of Jurists from visiting Tibet.

10. In conclusion, we appeal to the Sub-Commission to closely monitor the human rights situation in Tibet and to take appropriate concrete measures to end the human rights violations in Tibet.

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PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES

Written statement*/ submitted by Caucasians United for Reparations and Emancipation, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 June 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The lingering effects of plantation slavery have left my people and me in a deprived state. We are deprived of our original identity. We, the so-called African-Americans, have experienced the forcible removal of culture, religion and 'mother tongue'. The annihilation of our 'mother tongue' is the extermination of our identity.

To the extent that we have been deprived of our culture, our religion and our language, we do not have our human rights. We have been dispossessed of those human rights possessed by every minority and people and protected by the United Nations. While we are a People, and not a minority, in the United States we are placed within a minority status. We mimic the human rights of the majority; but in reality, we are in the position of a minority, as every scholar knows.

The United States of America has destroyed our human rights. It has covered us over with its own, fraudulently, by trick and by duress. We were buried and hidden, so very much so that United Nations in making its laws has left us out, it seems: it is not known immediately where we fit. To be left out of both the Declaration on the Rights of Minorities, and the International Covenant on Civil and Political Rights, is to not have political recognition of our human rights. Thus, we feel we can not intelligently argue the issue of a violation of our human rights. While we are human, we have not been in possession of our human rights for the past 400 years. Our human rights were willfully destroyed, utterly. They were destroyed by the slave masters, under the auspices of the United States central and local governments, during our long sojourn as slaves in America.

We, the so-called African-Americans, were taken away from the culture of our origin. The slave ship took us away from our ancestral religious belief. Regarding our original language, there were not any provisions set in motion by the local and federal governments of America for us to cultivate and continue speaking our language. To the contrary, originally, provisions were set in motion to prevent us from speaking our language. We were intentionally separated from one another with total disregard, during slavery, such that we would not be able to speak our language. Ultimately, we lost the knowledge of it.

By forcibly stripping us of the use of our language and of the right to be educated in the same, the Government of the United States deracinated our collective identity, making our condition irreversible. Absent exposure to our original tongue at the earliest possible stages in life and in primary and secondary levels of schooling, how could and can we speak it with other members of our community and preserve our individual identity? The United States causes us to remain trapped within the Anglo-American culture regenerating its 'mother tongue', in reality, its identity.

When we are able to argue about a violation of our human rights, this is our complaint: we are human beings, but to this date and time we are denied the human right of speaking our 'mother tongue' in violation of Article 27 of the International Covenant on Civil and Political Rights, which the United States of America has ratified.

The United States grants the right today for us to speak our language. Then speak it, one might say. How can we speak what the U.S. has denied us the use of? If our 'mother tongue' is taken away, aren't we denied the use of it? No! One may say, you are deprived of the use of it; there is a difference. Is not to be deprived of the use of our 'mother tongue' the same as being denied the use of it? No! Says the State, to be denied the use of it presupposes it is in your possession; while being deprived of its use presupposes it has been taken away. Well, since it has been taken away, we are both deprived and denied the use of it. The very act of taking our 'mother tongue' away was for the express purpose of denying us the use of it. In fact, the act is tantamount to a permanent ongoing denial.

Thus, this will be viewed as a gross and an excessive act of denial of the U.S. to permit the so-called African-Americas to speak their 'mother tongue' in community with other members of their group. While the act of the U.S. may be viewed as a violation of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, which the U.S. has not signed or ratified, the U.S. has made itself responsible for the rights of minorities, within its jurisdiction, to not be denied the use of their own language in community with other members of their group. We cannot speak ours. The U.S. grossly denies us the right, having deprived us, continually, of the very instrument. And in its place, the U.S. continually has forced its Anglo-Saxon 'mother tongue' upon us for the past 400 years. Absent our 'mother tongue', we are a non-people, living without a permanent identity.

We have brought our prayers to the Working Group on Minorities, as it has been entrusted with the task of promoting the rights of minorities. We wish to thank the Working Group on Minorities. We appreciate and applaud their efforts and join with them in the recommendation that a Regional Seminar for the Americas be held in order to examine the issues of African-Americans in the Americas.

In conclusion, we, so-called African-Americans, support the notion that "Race" is a constituent element of the definition of a minority. In the U.S. Blacks are mindful, daily, of a consciousness of "otherness", with respect to racial differences, as every scholar knows. And, unlike the Indigenous Peoples who were native to the territory, before colonization, and who formed many groups and spoke several languages, African-Americans were displaced from their common territory, and yet they invoke their similar characteristics in order to obtain their rights. As the so-called African-American "Racial" group is a group destroyed, it is axiomatic knowledge that we are a different racial group from the majority: we have neither racial dignity nor political bond.

The integration movement of the 1960s, whatever of high hope and of good intention, it did not make us equal with the majority, nor did it set us apart as a people or as a minority. We continued to mimic the human rights of the majority. At the same hour, during the1960s, there had long been developing in the U.S. not only a consciousness of "otherness", but also an awareness to bring that consciousness into reality. The Ethno-racial differences had then reached the glass ceiling, marked by violent rioting in major

cities: Watts, California; Newark, New Jersey; Rochester, New York; Cleveland, Ohio; Cincinnati, Ohio; Chicago, Illinois; Harlem, New York; Detroit, Michigan; Washington D.C.; and Atlanta, Georgia in the time period from 1965 through 1967.

U.S. federal agents cleared the way for a non-violent solution. The US Government and its media sought to redirect the rising Black consciousness, by promoting integration. Non-violent integration's chief advocate was the late and the memorable Dr. Martin Luther King Jr., who fell to his unfortunate death from an assassin's bullet in the year 1968, having commenced the civil rights movement December 1, 1955.

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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Written statement*/ submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 June 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

A concrete proposal for the promotion of human rights at national, regional and international levels by civil society and the grass roots

Unresolved political processes are at the roots of many of the conflicts that are still raging today worldwide. They are conflicts for which the international community is called upon to provide solutions and to restore respect for human rights. It is a fact that in the course of the above-mentioned processes and for many reasons, peoples' collective rights have not been respected, causing countless violations of individual rights as a side effect.

The respect of the these rights, epitomized in the right to self-determination, is an eminently juridical principle rooted in the concepts of democracy and personal freedom; nevertheless it is also a political principle whose enforcement depends on the climate, opportunity and suitability in a specific time frame. Thus, while the juridical principle is accepted, the consequences brought about by its enforcement are not. Such a political reading of this right contradicts the principles of justice, peace and co-operation among nations that should govern the international order.

International legislation has highlighted this specific aspect, identifying the development of peaceful relations and avoidance of conflicts between communities as a mechanism within the right to self-determination and its enjoyment.

Article 55 of the United Nations Charter proclaims that "with a view to the creation of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote ..."

Not only does the right of self-determination support individual rights, but it even constitutes the fundamental prerequisite for its very existence and in addition is the basic pillar of democracy in that it allows the citizens' participation in establishing a framework in which they can exercise their rights. Moreover, it is complementary to these rights, its application entailing the establishment of a sound base for overcoming conflicts, promoting respect of human rights and restoring peace.

2. A concrete example

One of the many conflicts the international community has not yet dealt with in order to promote and restore human rights is the case of the Basque people. This conflict, generated by the lack of respect of the rights of a national community living in two multi-national States, is the reality the Basque people have been facing for centuries in the French and Spanish States

The Basque people have moulded their history throughout a long and complex historical process and have created a community with similar as well as very different territorial characteristics in the region defined by the river Atturri (Adour) and the river Ebro in the western Pyrenees. The recent past of this people, torn by wars, impositions, acts of force and the abolition of rights, which have not been re-established as yet, has caused the Basque people to find themselves at the threshold of the XXI century, crushed in-between two States that deny their national identity, in a disarticulated cultural and political reality, in the face of an asymmetric economic and demographic evolution.

This long conflict, in its different expressions, has entailed an unquantifiable level of human rights violations. The repressive attitude of both States as well as the armed response by sectors of the Basque people have engendered countless violent acts that have led to clear-cut violations of individual human rights.

Many unsuccessful efforts have been undertaken in order to restore peace and to overcome the causes of the above-mentioned human rights violations. It is becoming increasingly evident that a peaceful solution can only be found by resolving the origins of the conflict, that is to say, by restoring the Basque people's collective rights and by respecting the citizens' will and their decisions, democratically taken.

3.- Mechanisms to overcome this conflict and to restore the enjoyment of human rights

The main objective will be the creation of mechanisms, instruments and bodies that will promote collective rights, and that by overcoming the logic of repression and political, economic and cultural annihilation previously mentioned will strengthen democracy as well as the full respect of the citizens' will in a scenario free from all expressions of violence.

In order to solve this conflict that has lasted too many years, the Basque people have persisted in their determination to carve out their future and they are today in a position to initiate a phase of popular and democratic construction with a view to achieving recognition of their identity. The search for mechanisms to overcome the conflict as well as formulas for the promotion of collective human rights, resulted in the proposal made by municipal representatives of the whole Basque territory to create a Basque national institution, with a municipal basis, that would assemble the Basque society and defend its identity.

From there comes the idea of Udalbiltza (Assembly of municipalities), the first national Basque institution on a municipal basis in the modern era, with more than 2.500 elected representatives coming from the whole territory.

The characteristics and nature of this body are:

- Popular legitimization: The direct participation of elected councillors in this institution is the guarantee of its proximity to the people, who decide on their mandate and their initiative.

- Full respect of democracy: based on the principles of freedom of expression and association, the Basque municipal representatives have the capacity to define the necessary proposals and directives. Only through a common voluntary will to work together can a truly democratic mechanism be created.

- Open character and personal adhesion of the municipal representatives: the representative themselves freely and individually constitute this national entity.

- Supra-state character. This popular assembly goes beyond the administrative and territorial limits imposed by the French and Spanish States in order to structure and assemble the Basque people on both sides of the border. Other examples exist of cross-border collaboration between communities with natural affinities.

- Representation of all Basque territories and respect of their individual specificity: This institution recognizes in this way the plurality and specificity fully respecting the personality and system of the historical territories.

- Integration process: Udalbiltza does not pretend to replace present institutions, rather it aims at being the first entity to claim national identity for the whole Basque territory. This project is not meant as a confrontation nor division or imposition but rather as an integration process based on respect and recognition of people and territories as well as on the free adhesion of the Basque citizens with the final aim of restoring lasting peace in the region

4. Potentials of Udalbiltza

Udalbiltza is a solution for the people and by the people themselves who has proposed its own mechanisms in order to deepen the structuring as a nation and to promote a relationship between them and the rest of the world.

Municipal representatives consider their initiative as an adequate response to the responsibility that citizens of the Basque country have entrusted to their municipal representatives of promoting a relationship between the Basque people of the six territories. The first challenge Udalbiltza faces is to provide an agreed action by municipal representatives enabling the development of all the spheres of activity and co-operation that identify them as a political, economic, social and cultural community, such as language, culture, sports, environment, territorial planning, economic development, social well-being, etc.

Hence Udalbiltza represents an entity for the promotion of peoples' human rights as well as a method to further develop democracy and the people's participation in the restoration of their collective rights. Furthermore, Udalbiltza constitutes an effective mechanism to eliminate the very origin of the violent conflict opposing the Spanish and French States to the Basque people, that is, to overcome the denial of sovereignty to the Basque people and finally to promote sound bases for peace rooted in justice.

The *International League for the Rights and Liberation of Peoples (LIDLIP)* considers that other peoples also could find in this initiative a useful course of action based on democratic representation of natural communities that allows the restoration of their political, economic, social and cultural rights as well as the solution of conflicts caused by the non-recognition of these rights.

The *International League for the Rights and Liberation of Peoples (LIDLIP)* wishes to present the Udalbiltza model as the expression of the popular will to be directly implicated in the promotion of democracy, as a method to encourage dialogue and understanding in order to progress towards the restoration of the Basque people's identity and, most of all, towards promoting peace at the national, regional and international levels.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement*/ submitted by Europe-Third World Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 July 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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LIBERALIZATION THREATENS FOOD SOVEREIGNTY AND DIMS THE PROSPECTS OF AGRARIAN REFORM IN THE PHILIPPINES.

The mainstream economic paradigm espouses liberalization of international trade as a means to development. In the field of agriculture, the Agreement on Agriculture that has been implemented under the auspices of the World Trade Organization (WTO) is the single most significant step that has ever been taken in this direction.

Five years after this agreement came into effect, it has become crystal-clear that its provisions are wreaking havoc on farmers and peasants the world over, intensifying exploitation, increasing landlessness and spreading poverty. In the Philippines, the Kilusang Magbubukid ng Pilipinas (KMP – Peasant Movement of the Philippines) has documented the nefarious effects of trade liberalization on the Filipino peasantry. CETIM wants to share its alarming conclusions with the UN Sub-Commission on the Promotion and Protection of Human Rights.

An Unfair And Uneven Agreement

The Agreement on Agriculture was the result of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT). Its history reveals much about its real intentions. Before the inclusion of agricultural trade in the GATT negotiations, the industrialized countries, especially the United States and the European Union, were competing with each other in escalating protectionist measures, actively encouraging an ever-increasing overproduction. In the 1980s, however, increasing competition and overproduction was leading to intensifying trade conflicts among the industrialized nations while world prices were plunging. Moreover, the high cost of subsidized programs to support their agricultural sectors became a heavy burden on the industrialized countries' budgets.

The Agreement on Agriculture under the Uruguay Round of GATT had to solve the chronic problem of agricultural overproduction in the industrialized world by expanding their markets. At the same time, it served to consolidate and strengthen the monopoly control of their transnational corporations (TNCs) on the food and agricultural sectors.

Expectedly, the US and the EU, the world's biggest exporters of agricultural products and home bases of the agribusiness TNCs, turn out to be the big winners of the Agreement on Agriculture. This agreeme t has hardly affected their ability to subsidize overproduction and export dumping while it has barred Third World countries from taking any measure to protect their domestic agriculture.

For example, the US Department of Agriculture (USDA) estimates that once the Uruguay Round and NAFTA are fully implemented by 2005-2008, the projected impact on US agricultural export will grow to over $10 billion a year. According to USDA estimates, exports directly attributed to trade liberalization will represent 13 percent of total US agricultural exports.

Liberalization Shapes Philippine Agriculture In Favor Of Big Business

Philippine agriculture bears the imprints of almost 500 years of colonial and neo-colonial domination. Even prior to the Uruguay Round of GATT, Philippine agriculture was export-oriented, import-dependent and dominated by foreign interests. This does not mean that the Agreement on Agriculture had little impact. It actually intensified the basic weaknesses of Philippine agriculture.

The Philippines did not have to reduce tariffs under the Agreement on Agriculture since tariffs were already below requirements. Instead, it bound itself not to raise tariffs beyond a certain level and to reduce the bound rates by 24 percent over ten years. Only for rice an exemption was made. While tariffication is delayed by ten years, the country is required to allow the importation of rice equivalent to 2 percent of domestic consumption in 2000 and 4 percent by the end of 2004, the so-called Minimum Access Volume.

The Philippine government did not have to reduce or eliminate subsidies, because there has never been any substantial support for its domestic agriculture in the first place. Instead, it bound future government not to implement any agricultural subsidies that could boost the country's moribund agricultural sector.

To implement the Agreement on Agriculture, the Philippine government passed The Agricultural Tariffication Act (Republic Act 8178). This law repealed existing laws prohibiting the importation of onion, potato, garlic, cabbage (RA 1296) and coffee (RA 2712); and centralizing the importation of beef (RA 1297). The Agricultural Tariffication Act also repealed two laws the small farmers had won through years of struggle: the Magna Carta for Small farmers (RA 7607) and the Seed Industry Development Act (RA 7308). These laws prohibited the importation of agricultural products and seeds when these are sufficiently produced in the country.

Agriculture was restructured in line with the increasing liberalization of the sector through a set of other laws and policies. Republic Act 7900, for example, gave incentives, tax holidays and infrastructure support for agribusiness corporations engaged in export crop production.

The 1993-1998 Medium-Term Agricultural Development Plan introduced new concepts evolving around the Key Production Area, prioritizing high value crops for export over staple crops for domestic consumption. At the same time, the government promoted industrial enclaves and development projects to attract foreign investors.

The same concepts are also the basis of the comprehensive Agricultural and Fisheries Modernization Act (AFMA) of 1997. For AFMA, "modernization" means the promotion of export crop production and incentives for foreign investors. The law even allows enterprises engaged in agriculture to import farm inputs and equipment without paying any tariffs and duties for a period of five years.

The current Estrada regime's 1999-2004 Medium-Term Philippine Development Plan claims that AFMA will "enable the sector to be dynamic, market-driven, readily accessible to improved technologies and internationally competitive" while transforming "sector stakeholders from subsistence producers to entrepreneurs."

This policy statement reveals the government's intentions to intensify the current drive to liberalize the agricultural sector. President Estrada is likewise favoring constitutional changes in order to grant foreign corporations 100 percent ownership of land.

Liberalization Undermines Philippine Food Sovereignty and Security

Due to the combined effects of government's implementation of the Agreement on Agriculture and other agricultural policies, the Philippine markets were flooded with agricultural imports. In 1994, the Philippines became a net importer of agricultural products, posting a $42 million agricultural trade deficit. The deficit almost quadrupled to $150 million in 1995. Since 1996, the agricultural trade deficit settled at around $750 million per year.

Although the local production of rice, the staple food of most Filipinos, was sufficient to meet demand, an increasing amount of rice was imported. Rice imports peaked at 2.2 million metric tons in 1998, more than twenty times higher than the Minimum Access Volume and almost 40% of local production. With 35 percent of total value, rice was the most important agricultural import product that year.

A comparison between the top ten agricultural imports and exports shows that imports were generally increasing while exports stagnated or went down. For example, from 1993 to 1998, corn imports swelled by about 500 times, from 640 metric tons to 462,000 metric tons; beef imports by almost four times, and pork 164 times.

Local production, on the other hand, was growing at a measly annual average of 0.23 percent from 1994 to 1998. The production of corn, sugar, peanut, tomato, cabbage, coffee, cacao and sweet potato steadily declined. In 1998, rice and corn, the two major staple crops, hit their lowest production figures since 1987 and 1984 respectively.

Liberalization Erodes The Philippine Peasants' Livelihoods

Since the implementation of the Agreement on Agriculture and the country's submission to the WTO, the living conditions of the Philippine peasantry worsened. Even the government admits that the total number of rural poor families increased by about 300,000 between 1994 and 1997.

The liberalization of the economy has increased production costs, thus affecting productivity and farmers' incomes. Especially the prices of seeds and fertilizer rose substantially. This is a direct result of the Philippines' import dependency as foreign agribusiness TNCs are able to charge artificially high prices because of their

monopoly position. The domestic price of urea, for example, is on a five-year average 73 percent higher than its world price.

While farmers are paying higher prices for their farm inputs, they have to sell their produce at prices that are depressed by the monopoly position of big traders or food processing conglomerates. Cheap, subsidized imports from the industrialized countries are now pushing the prices even lower.

Cargill, Continental and other US grain giants, for example, can sell US corn surpluses in the Philippines at prices equivalent to half the cost of local production. The corn from the US, however, has been produced by farmers who receive subsidies amounting to $29,000 each – more than any Philippine corn farmer can earn in a lifetime. The result is that, according to conservative estimates of the Department of Agriculture, at least 150,000 metric tons of corn were left rotting in the fields in 1998. Due to increasing US corn imports, average incomes of Filipino corn farmers are expected to drop by 15 percent by the year 2000, and by as much as 30 percent by 2004.

Liberalization Worsens Landlessness

That the past and present agrarian reform programs have failed to give land to the landless is widely known. The current trend, however, is the reconcentration of land in the hands of landlords and corporations. Increasing landlessness is the result.

The government's support for export crop production is openly encouraging landgrabbing by landlords and corporations, as small farmers do not have the means to venture into capital-intensive farming. The cancellations of previously distributed land certificates and land use conversions are effectively reconcentrating land ownership with landlords and corporations.

Contract growing is another scheme that suits export oriented agriculture. It gives the control over lands to TNCs even when they do not acquire actual ownership. The farmers are trapped in the monopoly position of the company as they have to buy their farm inputs from them and sell their produce to the company at the latter's terms.

These developments have driven more and more small peasants from their lands, depriving them of their livelihoods. Seven hundred thousand jobs in agriculture have been lost since 1996, raising official rural unemployment statistics to 1.3 million in 1998. An increasing proportion of peasants is forced to work as farm workers on landlords' farms and plantations, often earning as low as 60 to 90 pesos per day[1]. The number of wage and salary earners, as farm workers are euphemistically called in government statistics, increased 13 percent between 1993 and 1997. On the other hand, the number of own-account workers, including the farmers who own the lands they till, shrank by an average of .5 percent annually in the same period.

Together with KMP, we can conclude that the liberalization of agricultural trade under the WTO and the Agreement on Agriculture has had serious consequences for Philippine food sovereignty and the living conditions of the Filipino peasants. The people's basic rights to food and to decent living conditions were eroded further. Only thoroughgoing, genuine land reform, accompanied by just and democratic economic policies that serve the people's interest, can assure that the economic, social and cultural rights of the Filipino peasantry can be met. Therefore, we would like to recommend the following:

1. Thoroughgoing research should be carried out on the consequences of the liberalization of agricultural trade on the peasantry. Poor farmers should be involved in this study so that their voices would be heard and their gloomy experiences can serve as further evidence.
2. Agriculture should be taken out of the WTO immediately. All UN bodies should support this as an urgent measure to bring immediate relief to poor farmers in the Third World. Eventually, the WTO will have to be dismantled altogether as it is one of the staunch supporters of liberalization and deregulation, the very policies that have caused so much suffering to the poor peasants.

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[1] 1 $ = 42,80 pesos (June 26, 2000).

3. The principle of "land to the tiller" should be recognized as one of the basic rights of the farmers. The UN should ensure that genuine land reform is implemented immediately in all its member states. This would free the peasantry from the yoke of feudal exploitation. Moreover, it could be the cornerstone of rural development based on sound and sustainable agricultural practices as well as of the people's food security in the 21st century.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS, THE REALIZATION OF THE RIGHT TO DEVELOPMENT

Written statement*/ submitted by the Indian Movement "Tupaj Amaru",
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 July 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

THE CODE OF CONDUCT FOR TRANSNATIONAL CORPORATIONS

I – BACKGROUND

1. The concept of a Code of Conduct may be as old as time. It frightening rose to the mercantile society, where businessmen and public power felt the need and means to regulate commercial disputes and controversies which resulted from economic and trade affairs.

2. In the 20th century, "Latin American countries has put emphasis in the foreign policy on principles such as national sovereignty, territorial integrity and non-intervention as well as on the primacy of national law and domestic courts" (See chapter of the Organization of American States OAE, 1948)

3. Carlos Calvo (1822 – 1906) was the first to formulate the claim that "investment regulation in general and the taking of foreign property in particular are matters of domestic jurisdiction" (C. Calvo, Derecho internacional teorico y practico de Europa y America, 1968). Through the years, Calvo doctrine can be found in national standards and formulated in numerous Constitutions and other Conventions at regional level, for example, Decision 24 of Andean Pact. The abolishment of certain rules results in liberal policies.

4. In earlier times; "...In 1950, Uruguay took the initiative in formulating the sovereign rights of each State to freely exploit natural wealth and resources. In 1952, Chile proposed to include a paragraph dealing with permanent sovereignty over Natural Resources in the draft text of Article 1 on Self-determination and of the draft Covenants on Human Rights" (See Human Rights Covenants adopted in 1966

5. Since 1970, the international community has been trying to draw up a set of international standards, which would constitute legal guidelines for Transnational Corporation and States.

6. Due to protracted and heated negotiations, the government delegations were unable to reach a consensus on the nature and legal status of the future code of conduct. Following the Earth Summit held in Rio de Janeiro, 1992, at the request of the United States of America, it was agreed to drop the discussion of one of the most burning issues of "post-industrial civilization".

7. This senseless decision, which countermined the basic principles embodied in international instruments, was taken in response to pressure exerted by economic and financial circles. More particularly, as a result of the guidelines issued to the government by the World Bank and IFM, in respect of the treatment of Tics and direct foreign investment in the Third World countries.

8. Times have changed and more people are concerned with an unethical behaviour of the TNC. The 20th century changed the face of the world, leaving us with a rather bleak inheritance, namely: collapse of socialist countries; globalisation, extreme poverty and external debt; corruptions and organized crimes; ethnic conflicts with expansionist connotation, and a return to the Cold War. Consequently, the future code needs to reflect the new reality.

II – NEGOTIATIONS IN THE UN SYSTEM

9. All discussions have been marked by controversial disputes between industrialised and Third World countries, with regards, to the nature and legal status of the future code. The former proposed a solemn declaration of principles in the form of recommendations whereas, the developing countries recognizes globalisation as being the highest stage of market economy, wished to give the code a normative status. In their point of view, this concept in permanent evolution will be defined as a set of rules and norms with political and juridical value, legally binding to regulate the behaviour of international agents and transnational corporations encrusted in all spheres of the world economy.

10. On the 28th of July 1972, the United Nations Economic and Social Council requested the General-Secretary to appoint a group of eminent persons (...). "To steady the impact of multinational corporations on the world, especially on the developing countries and international relations" (See World Competition: Law and Economic Review, 14 (4) – June 1991, page 37).

11. On the 5th December 1974, after two years, the Economic and Social Council (ECOSOC) by its Resolution 1913 (LVII), established the Commission on Transnational Corporations (TNC), an intergovernmental body composed of 48 countries with mandate to assist the ECOSOC in formulating a set of recommendations in regards to a Code of Conduct for Transnational Corporations and the States.

12. In the meantime, the Center on TNC was created in 1975 as a Secretary of the Commission. Since then, the Center has taken charged to develop a credible information system on the TNC's activities and to investigate its impact in developing countries, notably in direct foreign investment. In June 1994, the Center submitted its final report to the Working Group on Indigenous Populations in accordance with the Sub-Commission's resolutions and was eliminated.

13. However, the formulation of the international standards has become the highest priority and responsibility of the UN Commission. At its second session held in Lima (1-12 March 1976), the Commission on TNC decided to establish an intergovernmental Working Group responsible for the elaboration and formulation of

the draft text for the consideration of the Commission at its fourth session held in 1978.

14. Since the western countries sustain economic and strategic interests, it imputes to the complexity of the task, and the Working Group was unable to finalize and submit to the Commission, a substantive formulation. As of 1990, the draft code is still not concluded.

15. The Working Group has held 17 sessions between 1977-1982 but after sustained efforts made during the seven years, the Group, in its report, states that although significant progress has been made, the work is still incomplete. "Whilst most substantive parts of the draft code had been negotiated as follows: the Introductory part, which includes the Preamble; chapter I: Objectives and General Policies of the Code; chapter II: Definitions and Scope of Applications; Chapter III: Activities on Transnational Corporations; Chapter IV: Intergovernmental Co-operation; and Chapter V: Implementation and Institutional Machinery". (See Development and Peace, 4 (2), 1983; page 81)

16. The few comments relating to the process of controversial negotiations during the past 30 years should serve as a bitter lesson for developing countries, especially in its capacity of negotiations with TNC. The actual draft code should have a basic element in the elaboration and achievement of a NEW CODE OF CONDUCT which will be reflected in both political and economic mutations in the world.

17. In the chapter on general and political questions of the draft text, the relevant principles have been formulated by developing countries, such as the respect of national sovereignty, the right to self-determination of all people and the strict observance subject to the laws and regulations of countries in which the transnational corporations operates.

18. Following the De-colonization of the UN Declaration on the Granting to Independence to Colonial Countries and Peoples in 1960 (Res. 1514 (XV)), the General Assembly with its Resolution 1803 (XVII), adopted on 14 December 1962, declared that: "The rights of people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interests of their national development and well-being of the people of the State concerned." (See Resol.1803)

19. Through time, this resolution has become the most important guideline in the elaboration of a code of conduct. It's urging that TNC should carry on their activities in conformity with the development policies, objectives and priorities set out by the countries in which they operate and respect socio-cultural traditions, values and human rights. The entities of TNC should be abstained from using pricing policies and any interference in political affairs, nor practice in corruption in host countries.

20. The most controversial issues were on the treatment of transnational corporations. The chapter has three sections: (a) General Treatment, (b) Nationalization and

Compensation and (c) Jurisdiction. During the discussion in the Working Group, a strong confrontation arose between the North and South States, Developed and Developing Countries.

21. Many developed countries, however, argues that the most important reason for an international code of conduct, is the need for better co-operation between governments as to the behaviour of the TNC in the host countries. They are interested in a balanced code, which would stipulate general principles of the behaviour not only for TNC but also for governments.

22. The Representatives of the Western countries would prefer a "broad and voluntary set of guidelines endorsed by Member States. According to this point of view, the moral force of Member States will ensure that the voluntarily adopted regulations are observed" (E/C.10/19 or World Competition: Law and Economic review, 14 (4) June 1991, page 40)

23. In the opposing camp for developing countries, it is very important for a specific, legal and universal instrument curbing certain turpitude of the TNC. They believe that the code by its nature and reach, should contain essential regulations applying to the behaviour of TNC and States.

24. Their just claims were founded in the Program of Action on Establishment of a New International Economic Order, which states as follows: "All efforts should be made to formulate, adopt and implement international code of conduct for transnational corporations:
    (a) To prevent interference in the internal affairs of the countries where they operate;
    (b) To regulate their activities in the host countries, to eliminate restrictive business practices and to conform to the national development plans and objectives of developing countries, and in this context, facilitate as necessary, the review and revision of previously concluded arrangements;
    (c) To bring about assistance, transfer of technology and management skills to developing countries on equitable and favorable terms;
    (d) To regulate the repatriation of the profits accruing from their operations, taking into account the legitimate of all parties concerned;
    (e) To promote reinvestment of their profits in developing countries." (See General Assembly Resolution 3202 (S-VI).

25. Face with the pretension relating to free transfer capital and income to mobility of enterprises and workers in and out of countries, the States of Western countries and the Group 77 nations presented in the Working Group proposed and formulated the following proposal: "the rights of States to regulate the entry and establishment of TNC".

26. This provision reaffirms the right of host countries to authorize the establishment of transnational enterprises in their territories as well as to determine the role that TNC

may play in economic and social developments of the country concerned. In its second text, the Group 77 countries insisted to include, "the prohibitions or limitations on the extent of TNC's presence in specific and strategic sectors." (Development and Peace, 4 (2), 1983, page 85)

27. In relations to the section on Nationalization and Compensation, it appears to have many controversial interests. As a result, from the Working Group Report, the developing countries claims that they should be able and should have the right to define the level and conditions of participation of TNC. To determine conditions of profit, repatriation and expropriations of foreign property. The discussion of these issues has revealed two concepts on the development and two opposing philosophies, reviving thus almost irreconcilable divergences not yet been solved by the international law

28. While the developed countries insists the issue of compensation, conditioning the right to nationalization on prompt adequate transferable and effective payment. "Such compensation payments should be freely convertible, transferable and should not be subject to any restrictive measures applicable to transfer of payments, income or capital" (Rev roumaine s'études internationales, 18 (1)/janv/fevr. 1984, page 44).

29. The nationalization provision and its dispute settlement clause have been stipulated in the Charter of Economic Rights and Duties of States as follows: "Each State has the right to nationalize, expropriate or transfer ownership of foreign property in which case, appropriate compensation should be paid by the State adopting such measures, taking into account its relevant law and regulations and all circumstances that the State considers pertinent." In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals."

30. On the other hand, paragraph 4 of the General Assembly Resolution 1803 (XVII), entailed: "Permanent sovereignty over natural resources", states a similar provision, "the nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interest, both domestic and foreign. In such cases, the owner shall be paid appropriate compensation, in accordance with rules enforced in the State, taking such measures as to exercise its sovereignty, and in accordance with international law".

31. The section on jurisdiction in the draft code contains three parts: the jurisdiction of the host State considered as an expression of its sovereignty; the situation where the jurisdiction applies to the operations of an entity of a transnational corporation and conflicts of jurisdiction between two or more States.

32. On the basis of this UN resolution, developing countries believe that, "any entity of a transnational corporation is subject to the national law, regulations and to establish administrative practices of the country in which it operates." "Disputes between States and entities of TNC, which are not amicably settled between the Parties, shall be submitted to competent national court" (Netherlands International Law Review, 39 (3), 1992; page 364).

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE QUESTION OF TRANSNATIONAL CORPORATIONS

Written statement*/ submitted by the Indian Movement "Tupaj Amaru",
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 July 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS

WHY URGE A CODE OF CONDUCT FOR TNC?

1. TNC plays an increasingly decisive role in the process of globalization of the world economy. Driving internationalization of the productions of goods and services in the North to South countries and liberalizes the foreign investment regime. They de-regulate the international financial system and generates a cyclic and structural crisis.

2. By their assets, the gigantic monopolies have holding controls of one third of industrial production and almost one half of the world trade. Rapidly become the independent super-power centre with an immense economic and political decision in host countries. Every transnational corporations operates and manages all activities from its headquarter or decision-making centers based in developed countries. It sets itself and its affiliates in developing countries by means of foreign direct investment (FDI) with a worldwide strategy designated to control the world economy.

3. With their vast, complex and contradictory universe, especially their infinitely great hegemonic power, TNC are genuine spider webs which involved all production and distribution of goods and services. Accumulating user capital, mobility of enterprises and workers in and out countries. They are omnipresent everywhere, particularly, in indigenous lands and territories, spoiling irrationally their wealth and natural resources and regard it as a strategic for the development of western world.

4. According to World Investment Report (1999), published by UNCTAD Division for TNC and Investment, "Since 1990, 100 largest and most powerful transnational corporations controls and manages the world economy." "The transnational corporations (TNC) are firms that engaged in international production. Comprised of over 500,000 foreign affiliates established by some 60,000 parent companies mainly from developed countries". (World Investment Report, Foreign Direct Investment, UN, New York, 1999, page2)

5. Amongst the 100 largest TNC ranking by Firkin Assets, 90 per cent have their headquarters in highly developed countries (European Union, Japan, United States of America, Canada), while only two in developing countries, notably, Petroleos de Venezuela and Daewoo Corporation of Korea.

6. "Over one third of global capital in the form of foreign direct investment (FDI) was held by these giant monsters, which have total assets about 3.2 trillion dollars, 40 per cent of which is invested outside the countries of origin" (See François Chesnais, Mondialisation du Capital, Paris, Ed.Syros, 1994; page 53).

7. On the basis of these asset values, the giant "General Electric, again, held the top position among the world's 100 non-financial TNC. Ranked by foreign assets, it holds the top place for the second consecutive year". "Approximately 85 per cent of the top 100 list is dominated by firms that have been in the top 100 ranking during these past five years" (World Investment Report, United Nations, 1999, page 77)

8. Beginning of the 21st century, all societies from North to South have succumbed to a world without borders, without laws and without ethical standards. The absence brings a need more than ever before, of an international legal framework that is capable of regulating the behaviour and activities of TNC and FDI throughout the world.

9. Certainly, the elaboration of the norms and regulations is given the most priority. This can be determined by a number of factors.

10. The invisible hand of the largest TNC are in a permanent quest of maximum profit. By their powerful nature, they often behave irrationally and blindly, that is without rules and outside the jurisdiction of host countries.

11) The Third World countries claims for the right to just and equitable development however impossible and improbable it is to bring such transnational activities under the control of a host countries' national legislation. The host States have gradually lost their bargaining power and sovereignty within the "Code of Conditionality" imposed by IFM. Now they can no longer exercise legal jurisdiction over foreign giant TNC and their affiliate companies operating in their territories. Now that the legislation no longer contains any references to the concept of "corporate nationality, rules of conduct or any definition of the legal status of ownership belong to TNC."

12) The host countries have liberalized their domestic laws and administrative practices. Substituting a more liberal investment regime, which neither specifies the legal status nor clearly defines the rights and duties of the transnational enterprises. At the time, these super national entities were not affected nationally nor stately. They operate and run through vertical links with their mother-parent giant companies which effectively means that they are only subject to the jurisdiction of the decision-making centers established in the industrialized countries.

14) In order to achieve their objectives and profits, they use and abuse several international financial institutions and legal and illegal mechanisms including unlawful means, such as bribery and corruption, political pressure and economic coercion, and even direct interference in internal political affairs of host countries.

15) In the South, globalization was preceded by the imposition of the neo-liberal development model as a universal and absolute value. In this sense, the structural adjustment programs imposed by the World Bank and IMF to Third World countries has generated the extreme poverty, which affects millions of human beings and external debt crisis. While the speculation through the world's exchange markets reached an astronomical profit margin, expanding immensely in general and absolute poverty. Even hungers are marginalized and excluded from the New World Economic Order.

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COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 July 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Migrant workers and their families in the countries of the North, and also nationals originating from countries of the South, are regularly the victims of racial discrimination in the form of physical and verbal violence, refusal to sell to them or give them jobs, discrimination in promotion, etc.

At the same time, the political authorities of the North take various kinds of action to promote civil and political rights in all the countries of the South (missions of inquiry, election monitoring, democratic conditionality clauses inserted in international agreements, etc.) in the name of some universal mission to promote human rights.

The industrial Powers of the North are trying to impose on the countries of the South standards they are unable to enforce at home for people (foreigners or nationals) living on their territories.

This contradiction can only be resolved by carrying out an assessment of the actual status of migrant workers in the North, and of nationals originating from the South who are living in the developed countries, both in Europe and in the United States.

The fact that xenophobia is sometimes of an individual, hidden nature, though still fraught with serious psychological and social consequences, should not prevent the Sub-Commission from intervening in the practices of the countries of the North, which have shown themselves, in the last few decades, incapable of suppressing it.

The policy of the authorities of the countries of the North, comprising the necessary changes in their societies through concrete educational and social measures, is a test of their real desire to establish a new relationship with the South in which xenophobia and racial discrimination play no part.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 July 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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The World Health Organization (WHO) has just published a list classifying health and social protection systems by State. A State's position on the list is not related to its economic power: the United States of America, for instance, is only thirty-fourth. The fact is that the right to health and social protection is a basic right but one which is making no headway in the South and is losing ground in many of the States of the North.

It emerges from these findings that the countries of the North that top the list are those that have the most highly developed public health services and where the health system is not in the hands of private insurance companies. As to the countries of the South, they do not have the means to cope with diseases such as AIDS, a situation to which, for all practical purposes, the countries of the North are turning a blind eye, as are very often the Governments of the South themselves which are riddled with corruption and give their preference to public spending that will help keep them in power.

Licensing and patenting laws and, more generally speaking, the policies of transnational corporations and pharmaceutical laboratories are, moreover, inimical to the interests of the people.

Adopting resolutions and making recommendations will not reconcile the irreconcilable - making the right to health effective without upsetting the international economic order and the logic of the legal system regulating it.

It is up to the Sub-Commission to look squarely at the facts of the issue; only then will it be possible to seek to achieve the effective realization of the right to health and to all economic and social rights.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE QUESTION OF TRANSNATIONAL CORPORATIONS

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

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In international society, it is the private forces that determine to a great extent the course of development, economic and social rights and human rights as a whole.

Any concept of the common good is foreign to the thinking underlying the operation of these transnational corporations.

It is coming to be generally recognized that some regulation is needed and that the laissez-faire practised by political leaders cannot create the conditions for sustainable and equitable development. Yet the only international regulations actually being considered have to do with finding insurance arrangements for the financial markets that will prevent a repetition of crashes like those that occurred in 1997 and 1998.

The Sub-Commission must not think that such measures as the transnational corporations themselves try to put in place are enough to give effect to the right to development.

The Sub-Commission must ask itself why the only regulatory measures with any impact are national in origin: the curtailment of the Microsoft monopoly by the United States Government, for example, or the spanner thrown into the negotiations on the proposed Multilateral Agreement on Investment.

This serves to demonstrate that international institutions are not currently capable of helping to build a regulated global economic order and are focusing their oversight on the economic consequences or on less crucial problems.

The Sub-Commission certainly has no way of reversing the order of things. It is nonetheless equipped, if Member States have the political will needed, to alert world opinion, as do the United Nations Development Programme or the International Labour Office, to the social realities spawned by globalization and by the concentration of the most decisive powers in the hands of the transnational corporations.

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Item 9 of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Written statement* submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 July 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Most States, particularly those from the South, are criticized for the way their justice systems work. It is of course perfectly legitimate to question a judicial system when its judges are not really qualified or genuinely independent, do not observe international human rights standards, treat minors like adults in criminal matters, etc.

However, the urgent need to reform State justice systems to make them more fair should not be the sole focus of the work of the Sub-Commission on the Promotion and Protection of Human Rights.

(a) The process of globalization is accompanied by the development of secret financial circuits imported by criminal organizations, and also by some individuals and political parties, in cooperation with certain transnational interests.

This globalization of transnational trade comes at a very high price for economic and social human rights: it deprives nations of the resources necessary for human development, at the same time as many Governments are claiming to be doing all they can to attract foreign investment. We know that deposits in tax havens are far higher than the total debt of the countries of the South.

(b) Today, impunity is practically guaranteed for these "social criminals": the political authorities in all countries without exception have shown themselves, for lack of any true political will, to be incapable of openly and effectively tackling this global fraud which robs peoples with the collusion of respectable financial companies. The most developed countries close their eyes.

It is therefore paradoxical that studies and missions of inquiry should be carried out and resolutions adopted to guarantee better protection of those on trial and of their civil and political rights while reforms of the operation of the courts that would help promote economic and social rights are totally neglected.

(c) For the promotion of these rights to be effective, a transnational judicial forum needs to be established, together with strengthened international cooperation between national justice systems which, in isolation, are powerless.

The Sub-Commission on the Promotion and Protection of Human Rights should study draft international judicial conventions and encourage international coordination in the work of judges, with no restraints other than those imposed by the rule of law. Otherwise, the United Nations would be "turning a blind eye" to one of the major obstacles to human development, which can only be removed by releasing resources that are today being diverted elsewhere.

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Item 6 of the provisional agenda

CONTEMPORARY FORMS OF SLAVERY

Written statement*/ submitted by Japan Fellowship of Reconciliation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 July 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.00-14392

"Comfort women": Breaking the treaty defense

JAPAN'S TREATY DEFENSE

Responding to the Final Report on systematic rape, sexual slavery and slavery-like practices during armed conflict (E/CN.4/Sub.2/1998/13.) submitted by Ms Gay McDougall, the Japanese government delegation, said on August 14, 1998 at the Sub-Commission:

"The Government of Japan has sincerely addressed and settled the issues relating to the war in accordance with the San Francisco Peace Treaty, bilateral peace treaties and other relevant international agreements. ... However, we regret to say that the Government of Japan can not agree with the legal interpretations expressed in the appendix to this report nor can we accept its conclusion and recommendations which request the Japanese Government to take steps to provide redress rather than that which we are already undertaking."

In her report, the Special Rapporteur, Ms. McDougall already elaborated the logical reasons why the Japan's treaty defense was not convincing. JFOR warmly welcomes her legal interpretations as well as her conclusion and recommendations.

JFOR wishes to add another legal ground, which can break the Japan's treaty defense. One may understand the importance of this argument, as it relates to not only the "comfort women" issue but also other compensation claims in relation to the Second World War. JFOR simplifies the issue by confining itself within the right of civilians in relation to the VI Geneva Convention (1948). It must apply, however, to Prisoners of War as well[1]. JFOR hopes that this statement could assist not only the UN but also its member states such as the U.S.A., where its Congress and Courts are considering the same legal issue for the forced labor cases[2].

VICTIMS' RIGHTS TO COMPENSATION

Art. 3 of the Convention (IV) Respecting the Laws and Customs of War on Land, signed at the Hague, on 18 October 1907 stipulates, "A belligerent party which violates the provisions of the said Regulations [i.e., the regulations of Land Warfare

annexed to the Convention] shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." This guarantees individual victims the right to compensation according to the legal opinion made by Prof Frits Karlshoven[3]. This article of the 1907 Hague Convention was understood to have been customary international law and it was succeeded by Art. 91 of the Optional Protocol to the 1949 Geneva Conventions. Thus, the individual civilian victims violated by the Japanese Imperial Forces have the right to compensation against Japan.

VICTIMS IN CHINA

1. GENERAL BACKGROUND

Although the Japanese government argues as mentioned above, one should first examine each case by country basis. Let us take China for example.

First, it is absurd for Japan to say "sincerely addressed and settled the issue" in the case of China, to which it paid no compensation at all for all the wrong doings including military sexual slavery and massacres of tens of millions of civilians. What are the contents of that sincerity? One may become speechless, if he/she recalls the fact that Japan invaded Korea and China and took a big sum of war reparation from China, namely JP¥ 345 million (150% of the Japan's war cost) in 1895 on top of Taiwan as well as de facto control of Korea in the name of victory in war [4]. This money was not returned to China. Yet, Japan has been maintaining that no single yen should be paid to any Chinese. This denial itself must be considered as the original sin of Japan.

Second, China is not a Party to the San Francisco Peace Treaty. Therefore, it is not applicable to China.

Third, the Treaty of Peace between the Republic of China (Taiwan) and Japan of April 28, 1952 became null and void in accordance with the Sino-Japanese Joint Communiqué of September 29, 1972.

Fourth, there exists only one bilateral agreement relative to war claims, the Sino-Japanese Joint Communiqué of September 29, 1972. It includes no explicit provision, which waived the right of individual victims. According to Art. 5 of the said Joint Communiqué, " The government of the People's Republic of China declares that in the interest of the friendship between the Chinese and Japanese peoples, it renounce its demands for war reparation from Japan." The Japan Federation of Bar Associations made public its legal opinion that this provision did not waive the right to demand reparations for losses and damages sustained by Chinese nationals[5]. JFOR strongly supports this view.

PROHIBITION OF RELINQUISHMENT OF THE RIGHT OF VICTIMS OF WAR

The governments of the Parties to the IV Geneva Convention relative to the protection of civilians must be aware that the Convention, under Art. 148 and Art. 7, prohibits any agreements for the relinquishment of the rights of the protected persons.

First, Art. 148 of the IV Geneva Convention reads "No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article." Therefore, if any military personnel commit war crimes or crimes against humanity, which are defined as grave breaches under Art. 147, the responsible Parties could not be allowed to absolve itself from any liabilities including responsibility for compensation due to the crimes and other Parties shall not be allowed to relinquish the rights of the victims without compensation from the responsible state.

Second, the second sentence of Art. 7 (1) of the IV Geneva Convention reads, "No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them." Therefore, the guarantee under Art. 148 cannot be adversely changed by any other international agreements.

These two articles clearly prohibited China and Japan to absolve Japan of the individual rights to compensation, in particular, if it comes to the issue of grave crimes. The conducts by the Japanese Imperial Forces against the Chinese women for sexual slavery is included in grave crimes in Art. 147, as slavery was the most serious crime under international law and it must constituted all or any of "torture", "inhuman treatment", "willfully causing great suffering" and "serious injury to body or health".

Therefore, China must have not waived the right to compensation of the individual victims under Art. 5 of the said Joint Communiqué, because it is unthinkable that China intentionally violated international law. Even if we assume the hypothetical case, where China and Japan tried to waive the right of individuals, that part of the Joint Communiqué did not take effect, as both China and Japan "shall not be allowed" to do so by Art. 147; and as "No special agreement shall adversely affect the situation of protected persons.".

THE GENEVA CONVENTIONS RELATIVE TO CHINA AND JAPAN

The Geneva Convention was concluded on August 12, 1949 and took effect on October 21, 1950. Japan acceded to the Geneva Convention on October 21, 1953 before the said communiqué. The Geneva Convention bound China in 1956 well before 1972 as well, as it was a Party to it. According to the International Committee of Red Cross[6], the status of China relative to the Geneva Conventions of 1949 is: Signature on 10.12.1949. Ratif.Accession on 28.12.1956.

CONCLUSION ON THE CHINESE VICTIMS

Therefore, China and Japan could not conclude any agreement to waive the right of individual victims under the said Joint Communiqué. Thus, the right to demand compensation against Japan of the individual military sexual slavery victims in China was never waived. Their right must exist even now.

THE VICTIMS IN OTHER COUNTRIES THAN CHINA

The second sentence of Art 26 of the San Francisco Peace Treaty (1951) is stipulates as follows:

"Should Japan make a peace settlement of war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty."

This could be understood as a "most favored nations" clause.

The 1972 Sino-Japanese Joint Communiqué is the peace and war claims settlement between Japan and China, which was concluded after the 1951 San Francisco Peace Treaty. In it, China never waived its nationals' individual rights to war claims against Japan.

Therefore, under Article 26, the victims of the Parties to the San Francisco Peace Treaty are entitled to similar treatment. Thus, Japan should give the same advantages, as if there had been no waiver of the rights of these individual victims.

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[1] See Articles 6 and 131 of the III Geneva Convention.

[2] The LA Times of June 28, 2000. The Japan Times of June 30, 2000.

[3] Legal opinion made by Prof Frits Kalshoven submitted in 1997 to the Tokyo District Court, in Fujita, Hisakazu, et al., ed., *War and the Rights of Individuals – Renaissance of Individual Compensation*, Nippon Hyoron-sha (1999). pp. 1-294.

[4] Kiyoshi Inoue, *Nihon no rekishi (ge)*, Iwanami shoten (1966). pp. 34-40.

[5] JFBA, "Supplementary Explanation of the Recommendation on the Issue of "comfort women"" (June 1995). pp. 10-12.

[6] SOURCE: *UNTS*, Vol.260, 1957, pp.438-444.

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Items 4(a) and 12 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Written statement*/ submitted by Europe-Third World Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[21 July 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Market rules are not those of democracy, nor of social progress

Under the guise of globalisation – which is presented as inevitable and irremediable – a deeply inegalitarian and anti-democratic society is imposing and reinforcing itself, multiplying outcasts and oppressed people, in the North as well as in the South. The present development of this globalisation, under the neo-liberal leadership, does not lead to equal opportunities, to knowledge sharing and increased living standards for everyone, be it inside a given country or between groups of countries. The gap between economies of the centres and those of the peripheries of the global economic system is increasing every day. In fact, this gap is at the heart of the system perpetuation.

The notion of power is no longer linked with the community of States, except in "cases of emergency", described as "humanitarian". National sovereignty is admittedly still recognised on paper, but with such restrictions that it is progressively emptied of any real democratic content. The "authorized" discourse today is held by those who have the economic power. In the name of an "invisible hand", supposedly beneficial for all, any constraint to the free spreading of capital on the whole planet is abolished and any instrument giving peoples a grip on their future is abandoned. The world's seven economic great powers (G-7) – that we can find at the head of the International Monetary Fund, the World Bank, the World Trade Organisation and, but one of them, the NATO – are defining the political, financial, economic and military aspects of the pyramid-shaped power system.

Market is not democracy

Neoliberalism is based in particular on a lie, or on a false evidence which by dint of being repeated daily by the economic elite and the media seems unquestionable : democracy and market go hand in hand and are reinforcing each other. And yet, nothing is more false and misleading.

If by democracy we mean discussion and debate leading to equal rights enjoying human beings choosing freely a project for a collective future, then the unilateral imposition of market rules on individuals and peoples is, on the contrary, antinomical to real and shared democracy. Market, as defined by contemporary neo-liberals, where "free and equal partners" would act in a deregulated space, is a pure fiction. Such is as well the belief that this free market is one of the conditions for the existence of other liberties. In fact, market is working only because it is regulated by battles of wills and power struggle which allow the strongest to come out. The question then is to know by whom and to the benefit of whom the market is regulated[1]. Today, it is controlled, in a hidden and unilateral way, by the heavy hegemony of a few hundreds oligopolies whose cold rationality's only objective is the defence of their short term own interests and is far away of equity, representativeness and solidarity which the notion of democracy is referring to.

Confining democracy to politics – and in addition to that, excluding economics from its sphere of action in the name of "competition" and "free game of market powers", at the time when market rule has taken over (almost) every area of human activity – amounts to depriving democracy of any grip on reality; it dangerously risks taking away any meaningful content from its conquest – dearly bought, and never acquired, by peoples, working class and popular strata.

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[1] On this question see the remarkable issue of *Alternatives Sud* "Démocratie et marché", vol VI (1999)3 and in particular the article by Samir Amin, pp. 171 ff

And yet, hegemonic powers are going on with their "everything to the market" option, through the Troyan horse of the WTO. Decisions taken by this institution, like for example the negotiations on TRIPS (trade-related intellectual property rights) agreements, are "opportunities" for industrialised countries to establish new international rules protecting transnational corporations' monopolistic rent incomes, ignoring collective rights of peoples, preventing Third World countries access to knowledge and restricting possibilities of specific self-centred development. TRIPS have mainly contributed to plundering and resources harnessing of Southern countries : 80% of patents are being held by US, English, German, French and Swiss transnational corporations. The discovered, exploited, modified or adapted great biological diversity of the South is becoming the "intellectual property" of private interests of the North alone.

For a while destabilised by opposition of all kinds which showed up at Seattle and the resounding failure of this ceremony which was supposed to open a "Millennium Round", the decision-makers hurried to declare that there is no question for them of loosing one minute before starting again. At the most, some of them have admitted that maybe it would be useful to act more tactfully, to better communicate, to open a dialogue. But, they added immediately, only with those who do not question the cardinal virtues of the market and the validity of their "liberal" credo. So, the international meetings of Washington, Bangkok and Geneva have followed, with as sole discourse (and solution) the reaffirmation of the belief in the market economy benefits.

A necessary reaffirmation of human and peoples rights

The increasing lack of interest for voting in countries of the North, the quick disappointment which followed the introduction of multipartism in countries of the East and South, the attraction exerted by religious fundamentalism or ethnicism, but also, fortunately, the greater and greater mobilizations outside the parliamentary and institutional framework show how much peoples are perceiving the inept character of the equation linking "free and deregulated" market and any democratic project[2]. And the appraisal of neo-liberalism is no longer to be done, it is obvious. These 25 years of unbridled neoliberalism have resulted in a generalised chaos, an increased number of conflicts, an even more pronounced polarization of societies and countries, a proliferation of mafias and corruption phenomenons and, despite more and more pressing warnings, an ever more worrying jeopardizing of the ecosystem. The risk of provoking a situation worse than that of today is latent.

The capitalist system and its affiliated institutions have showed their limits through their economic inability to provide all human beings with the material basis for their physical and cultural life. We have to question and attack the logic of this unilateral system of regulation by the "market" so that nations and peoples can not only regain their fundamental rights within national and international democratic institutions but also take decisions relating to their own destiny.

The Europe - Third World Centre (CETIM) is pleased about the nomination of Mr. Oloka Onyango and of Ms Deepika Udagama as Special Rapporteurs in charge of preparing a study on the question of globalisation and its impact on full enjoyment of human rights. This study is to show the incidence of the present economic globalisation on human rights.

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[2] See *L'autre Davos : Mondialisation des résistances et des luttes*, L'Harmattan, Paris, Montréal, 1999.

The resolution for the promotion of the right to a democratic and fair international order (E/CN.4/RES/2000/62) adopted at the last Human Rights Commission is giving interesting tracks for reflecting on the necessary reforms of the international financial institutions. The resolution reiterates every State's right to an international economic order based on equal participation in the decision process and to a fair access to the benefits of the international wealth distribution. It reaffirms the right to open, democratic, fair and responsible international institutions in every cooperation area, in particular through the implementation of the principle of full and equal participation in the decision mechanisms of these various institutions.

In our view, the globalisation process of the neo-liberal model is an obstacle to the implementation of the economic, social and cultural rights (ESCR), in particular of the right to development. It violates articles 1 and 2 of the Pact on economic, social and cultural rights. Any international cooperation between States for the implementation of the ESCR is compromised or limited by agreements elaborated in international financial and trade institutions. In this area, the Europe - Third World Centre (CETIM) is earnestly asking the Special Rapporteurs of the Sub-Commission to thoroughly study the role and impact of the Bretton Woods financial institutions and of the World Trade Organisation on the implementation of the ESCR.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement*/ submitted by Habitat International Coalition and the Lutheran World Federation, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 July 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.00-14475

THE WTO TRIPS AGREEMENT AND HUMAN RIGHTS

Introduction: A Human Rights Approach to Intellectual Property

Habitat International Coalition, the Lutheran World Federation and the International NGO Committee on Human Rights in Trade and Investment welcomed Sub-Commission resolution 1999/30 (E/CN.4/SUB.2/RES/1999/30), which called for "Governments and economic policy forums to take international human rights obligations and principles fully into account in international economic policy formulation," and "to undertake comprehensive and systematic studies, in consultation with United Nations and regional human rights mechanisms and relevant civil society organizations, of the human rights and social impacts of economic liberalization programmes, policies and laws."

Despite the increasing attention being given to economic globalization and human rights, we believe that the human rights implications of specific agreements, such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), have not been sufficiently addressed by the international human rights community. In this statement we try to identify some of the links between human rights principles and instruments and the TRIPs Agreement, and thereby to illustrate how parallel regimes have emerged in which international and regional human rights principles, instruments and mechanisms continue to be marginalized.

An intellectual property regime grants conditional, temporary exclusive rights over inventions, literary works, designs, etc. Human rights law conceptualizes IPRs as conditional on the social benefits that accrue from them. However, the application of IPRs in the industrialized countries and at the international level has focussed almost exclusively on the recognition and protection of the rights of inventors and artists to their creations and on the provision of a commercial incentive for technological innovation.

Intellectual property law requires IPR applications to demonstrate that an invention is original, useful, and non-obvious. A human rights approach to IPRs focuses on their complementarities with all other human rights. Human rights are indivisible, and no human right can violate another. The holistic nature of the human rights approach also complements the provisions of the Convention on Biological Diversity (CBD), which *inter alia* mandates the protection of biological diversity and indigenous knowledge.

In the case of IPRs and other economic, social and cultural rights, an equitable balance must be struck in order to adequately protect the rights of producers of ideas and products and the rights of users and the general public, particularly in developing countries. In the balance, great weight must be given to human rights law, as it is the legal expression of the fundamental elements of human dignity and has primacy in international law.

The WTO TRIPs Agreement

Since 1995, the WTO TRIPs Agreement has set enforceable, international minimum standards for the protection of IPRs.

Under TRIPs, copyright, patent, or trademark infringement in another country is punishable through trade mechanisms by, among other things, cross-retaliation by the country in which the copyright, patent, or trademark is held.

Article 27(3)[b] of TRIPs also requires the patentability of microorganisms as well as microbiological and non-biological processes for the production of life.

The principal human rights instrument that informs the discussion on TRIPs is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by 143 countries.[1] The UN Committee on Economic, Social and Cultural Rights (CESCR) monitors the implementation of the provisions of the Covenant. The Convention on Biological Diversity (CBD)[2] outlines the basic elements for safeguarding biodiversity as well as indigenous and traditional knowledge and practices associated with biodiversity.

Human rights in the TRIPs Agreement

Whilst the TRIPs Agreement does not specifically refer to human rights, it does include several articles providing for measures to limit the extent of IPR protection. The preamble to the Agreement recognizes "that intellectual property rights are private rights," and Article 8(2) notes that "appropriate measures...may be needed to prevent the abuse of intellectual property rights by right holders."

Intellectual property rights in the ICESCR and CBD

ICESCR recognizes intellectual property as a human right in Art. 15(1)[c], which provides that everyone has the right "to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." The indivisibility of human rights is the basis of the Covenant, in which other articles protect people and communities from the infringement of their economic, social and cultural rights and promote the enjoyment of their economic, social and cultural rights.

The CBD recognizes IPRs3, but not at the expense of environmental sustainability.

Technology Transfer and Development

The objectives of TRIPs4, the ICESCR5, and the CBD6 include technology transfer and development. According to TRIPs Art. 8(1), "Members may, in formulating or amending their laws and regulations, adopt measures necessary to...promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement."

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[1] Of the 137 WTO member states, 107 have ratified the ICESCR.

[2] Convention on Biological Diversity, adopted June 5, 1992, A/CONF.151/26, 31 ILM 818 (1992)

[3] CBD Art. 16(2): "access to and transfer of technology...shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights."

[4] TRIPs Art. 7: "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations." Moreover, Art. 66(2): "Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members."

[5] ICESCR Art. 15(1)[b], recognizes that everyone has the right "to enjoy the benefits of scientific progress and its applications."

[6] CBD Art. 1: "The objectives of this Convention...are the conservation of biological diversity, the sustainable use of its components...including...by appropriate transfer of relevant technologies." Art. 16(1): "access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention."

But TRIPs requires the recognition of patents for 20 years (Art. 33 on patents: "The term of protection available shall not end before the expiration of a period of twenty years.") 97% of all patents are held in industrialized countries, and 90% of technology and product patents are held by multi-national corporations (MNCs)7. This combination in reality signifies that TRIPs hinders important technology transfers to developing countries, and incurs high short-term costs for development. For certain types of technologies the costs can be even longer term. This is particularly a problem when patent monopolies hinder the transfer of environmentally sustainable technologies. Moreover, IPR protection may hinder research and development (R&D) of new drugs and medical technologies in developing countries, which often do not have total pharmaceutical sales volumes approaching the cost of R&D for one new drug.

Patents on Life Forms

Requiring the recognition of patents on life[8] undermines self-determination[9], as it reduces peoples' control over their own genetic and natural resources[10] and may conflict with cultural/religious/social-ethical values in many countries, both developing and developed, as it threatens the sanctity of life.

Food Security

Implementation of TRIPs[9], and the model of plant variety protection, increasingly serves the interests of commercial enterprises in industrialized countries under regimes like the Union for Protection of New Varieties of Plants (UPOV), jeopardizes food security[11] for millions of small farmers in developing countries who are not able to afford brand-name seeds, and impinges on their traditional rights in the area of seed development, procurement and distribution. (Ongoing negotiations under the Food and Agriculture Organisation (FAO) International Undertaking on Plant Genetic Resources, which have significant implications for the food security of tens of millions of people across the world, are also stressing the need to protect the interests and rights of farmers.)

Access to Medicines

TRIPs compromises the access of poor countries and communities to needed pharmaceuticals. This has already impacted AIDS and cancer patients in poor countries, whose essential medicines are not affordable when patent-protected. The commodification of pharmaceuticals and medical

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[7] P. Kingsworth, Jan./Feb. 1999 issue of the *Ecologist*

[8] TRIPs Art. 27(3): "Members may also exclude from patentability...(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof."

[9] ICESCR Art. 1(1): "all peoples have the right of self-determination.... They freely determine their political status and freely pursue their economic, social and cultural development."

[10] CBD Art. 3: "States have...the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." Art. 15(1) recognizes "the sovereign rights of States over...the authority to determine access to genetic resources." ICESCR Art 1(2): "all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation."

[11] ICESCR Art. 11(1): everyone has the right "to an adequate standard of living for himself and his family, including adequate food." Art. 1(2): "In no case may a people be deprived of its own means of subsistence."

techniques, which affect human survival, is contrary to a human rights approach, which places human well-being[12] above commercial advantage.

Biopiracy

IPR protection in practice has in some cases led to the transfer, without consent of their original holders, of genetic resources or knowledge relating to genetic resources, and the subsequent patenting by others of these resources, products or processes, for commercial exploitation. The patentability of life forms and life production processes, e.g. genetically modified organisms (GMOs) and even human genes[9], poses a practical threat to the subsistence, self-determination[13], and cultural participation rights of indigenous peoples[14] and other local communities. It is a matter of concern that TRIPs contains no obligations corresponding to the protection of the rights of communities under the CBD and the proposed revision of the FAO Undertaking, leading to the likelihood that TRIPs will further intensify the "biopiracy" trend mentioned above.

Biodiversity

The protection of IPRs over GMOs[9], especially untested GMOs[15], presents a concern for environmental sustainability and the conservation of biological diversity.

International Cooperation

As the human rights covenants and conventions to which states are parties are legally binding under general international law, no state should violate their own, nor assist or coerce other states in violating their international, pre-eminent legal obligations. Nor should any state violate or assist in violating the human rights of persons not under their jurisdiction.

In fact, States parties to the ICESCR bear a duty to cooperate internationally to realize the legal obligations under the Covenant. Relevant ICESCR articles requiring international cooperation include 2(1), 11, 22, and 23. In particular, Article 15(4) of the ICESCR imparts the duty to "recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields." Article 16(5) of the CBD also recognizes "that patents and other intellectual property rights may have an influence on the implementation of this Convention," and encourages international cooperation "in order to ensure that such rights are supportive of and do not run counter to its objectives."

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[12] ICESCR Art. 12(1): everyone has the right "to the enjoyment of the highest attainable standard of physical and mental health."

[13] CBD Art. 8(j) safeguards the "knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity." Art. 15(1) recognizes "the sovereign rights of States over...the authority to determine access to genetic resources," and paragraph 7 articulates "the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources."

[14] ICESCR Art. 1(1): "all peoples have the right of self-determination.... They freely determine their political status and freely pursue their economic, social and cultural development." Art. 1(2): "all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation.... In no case may a people be deprived of its own means of subsistence." Art. 15(1)[a]: everyone has the right "to take part in cultural life." Art. 15(2): "The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture."

[15] CBD Art. 8(g): "regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts...taking also into account the risks to human health."

Ensuring that the outcome of international economic negotiations does not entail the violation of ICESCR obligations requires international solidarity.

Conclusion

As illustrated above there are numerous human rights implications of the TRIPs Agreement. Given the role of the Sub-Commission in drawing the attention of the international community to the human rights implications of economic globalization, we urge the Sub-Commission to take concrete action on TRIPs. In doing so the Sub-Commission must reassert the primacy of human rights obligations over the commercial and profit-driven motives upon which agreements such as TRIPs are based.

In this spirit, HIC, LWF and INCHRITI encourage discussion in the Sub-Commission on TRIPs, under its agenda item on economic, social and cultural rights and in its Working Group on Transnational Corporations (TNCs).

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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED: HUMAN RIGHTS AND DISABILITY

Written statement*/ submitted by Inclusion International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 July 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.00-14479

Inclusion International, which represents some 200 associations in 115 countries, acts as watchdog for the protection of the human rights of 60 million persons with intellectual disabilities and the hundreds of millions of family members who share their lives, who can be found in every nation throughout the world.

Inclusion International is one of the largest grass-roots networks of families, friends, self-advocates and professionals, all devoted to combating discrimination, abuse and neglect of these people.

For 40 years this non-governmental organization has developed initiatives in order to reach its goals :
- Inclusion of people with intellectual disability in all aspects of society;
- Full citizenship which respects individual rights and responsibilities;
- Self-determination in order to have control over the decisions affecting one's life;
- Family support through adapted services and self-help networks.

In past years, significant progress has been made in improving the living conditions of people with disabilities:
- Since they were introduced in 1993, the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities have played a major role in making disability issues more visible;

- A number of governments have introduced legislation and policies based on the Standard Rules, and others are on the eve of formalizing policies in order to create sustainable change.

There is growing recognition of their human rights:

- During the most recent meetings of the Commission on Human Rights, the need to respect the human rights of persons with developmental and psychiatric disabilities has been specifically emphasized in Resolutions 1998/31 and 2000/51.

Thus Inclusion International is fully aware of the advances made. Nevertheless, such signs of progress must not only be pursued and developed, but actively defended.

- Almost a decade has passed since the link between disability and human rights was clearly outlined by the Special Rapporteur of the Sub-Commission, Mr. Leandro Despouy, in his study. But little has come of his work despite the concrete recommendations for action expressed in paragraphs 271-284.

- In practice, people with disabilities continue to be marginalized. People with intellectual disability, in particular, are the most likely of all to be incarcerated in inhumane institutions. They are commonly deprived of an education, refused ordinary social relationships, blocked from meaningful and gainful employment, reduced to irrevocable poverty… their civil and political rights are frequently abused, as are their physical persons.

- These problems are not limited to developing countries. They may be found in every nation of the world, and have been acknowledged by Mrs Mary Robinson, United Nations High Commissioner for Human Rights.

- Disability issues are losing visibility. NGOs observe with dismay a growing tendency in international reports to refer to people with disabilities within the poorly defined framework of "vulnerable" and "disadvantaged" groups. Despite the obvious and laudable wish to avoid stigmatization, this broad wording puts the rights and needs of people with disabilities at risk (and in particular those of people with intellectual disabilities) since, unnamed, they tend to be forgotten.

- United Nations human rights organs have failed to agree on an international treaty to promote and protect the rights of people with disabilities, despite the fact that specific and relevant treaties already exist for other vulnerable groups such as women, children, migrant workers and refugees.

Therefore, Inclusion International has decided to take a more pro-active stand in its defence of the human rights of these people.

It is to this end that Inclusion International established in March 1999 its "Task Force on Human Rights" composed of experts from around the world who are competent in a range of specialized issues such employment, bioethics, inclusive education and ageing, and well-acquainted with the working mechanisms of the United Nations and its related agencies.

It is to the same end that Inclusion International signed the resolution adopted by the major national and international disability NGOs attending the Beijing Forum, in full support of the principle of a special Convention on the Rights of Persons with Disabilities in order to prevent and remedy violations of their human rights, whatever their disability.

Inclusion International would like to see the human rights of people with intellectual disability maintained on the agenda of the Sub-Commission, as an item of constant concern and attention, and suggests that the Sub Commission request one of its members to review recent developments in this field and submit a paper on this subject.

Inclusion International hopes that the idea of the elaboration of an international Convention that legally binds nations will be supported by the members of the Sub-Commission.

And finally, Inclusion International announces its willingness to co-operate as fully as possible with this Sub Commission, in order to help make respect of the human rights of people with intellectual disability, into a worldwide and everyday reality.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE REALIZATION OF THE RIGHT TO DEVELOPMENT

Joint written statement*/ submitted by Europe-Third World Centre, a non-governmental organization in general consultative status, and the American Association of Jurists, the Commission for the Defense of Human Rights in Central America, the Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos, North-South XXI and the Service Peace and Justice in Latin America, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 July 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

THE ROLE OF THE UNITED NATIONS IN THE PROMOTION OF THE RIGHT TO DEVELOPMENT

I. In 1978, the non-governmental organization "Declaration de Berne" published a booklet entitled "The infiltration of multinational corporations into the United Nations". Based on solid documentation the booklet describes the activities carried out by important transnational corporations (Brown-Bovery, Nestle, Sulzer, Ciba-Geigy, Hoffmann-La Roche, Sandoz, Massey-Ferguson, etc.) With the view to influencing the decisions taking by different bodies of the United Nations system. At present, "infiltration" is no longer neccesary because the doors of the United Nations are being widely opened to the transnational corporations in accordance with the general pattern of granting decision-making power to the big economic and financial conglomerates while taking such power away from its legitimate owners- the States and the peoples, the United Nations engages in a policy that works in detrimental to the civil, political, social, cultural and economic rights of the great majority of the world population.

II. Former Secretary General Butrous Ghali made several public statements outlining the current policy of the United Nations, which promotes a closer association of transnational corporations in the process of international decisions (among that Davos 1/26/95), and recognizes the primacy of the transnational society over inter-estates society (speech at the University Carlos III, Madrid, 4/15/94).

III. The current Secretary General, Mr. Kofi Annan sped up the process to put the United Nations under the rule of the transnational corporations. In his report to the General Assembly on "The enterprising capacity and privatization as a means to promote economic growth and sustainable development" (A/52/428), the Secretary General assumed an unequivocal position in favor of "a single economic model" (see the analysis of the report in statement submitted to the Sub-Commission by AAJ and CETIM in 1998, E/CN.4/Sub.2 /1998/NGO 20).

The model that the report of the Secretary General attempts to promote is in absolute conformity with the imperatives oriented towards increasing the profits of international corporations and banks through a globalization intended to reduce costs and capture markets regardless of the economic, social or political consequences to the countries and peoples affected. "The model " is in fact an imposition of an economic system that reinforces the rule of the rich countries and, in particular, their economic and financial elites over the majority of peoples and nations of the world.

The Secretary General maintains in his report that "..... deregulation has become the slogan for governmental reforms of every developed as well as underdeveloped country" (par. 50 of the Report), and it promotes the sale of public corporations trusting: "... the management of property and investment by the people having the experience and the necessary capacity to improve production, even if that means, at times, the sale of the stocks to foreign investors" (par. 29). At the beginning of the same paragraph he pronounces himself against the "ample distribution of the capital of private corporations," meaning that he disagrees with the participation of small investors. The proposal is clear: all viable large public corporations must be in the hands of the leading transnational corporations.

This is an attempt to legitimize the policies practiced at a worldwide scale, which consists of wrongfully sell viable state corporations, offen through procedures which are clearly corrupt, with a view to privatizing profits and socializing loses.

The Secretary General seems to ignore that the public sector has contributed to progress, social cohesion and technological innovation. The analysis of the Secretary General omits the fact

that imposing on public enterprises management criteria inherent in the private sector, e.g. the earning of profits, frequentley had a negative effect because undermines the proper purposes of the public sector, including the notion of public service.

In the above mentioned report, the Secretary General reiterates the plan outlined in July 1997, in the context of proposals for the reform of the United Nations, to establish an inter-institutional service linking private corporations with the United Nations, and to make arrangements with well-known corporations witha view to establishing improved mechanisms to continue the dialogue between representatives of the business world and the United Nations (Report of the Secretary General A/51/950, par. 216. Meas. 17 c) and d)). This project is already being implemented through the " Global Compact" which will be inaugurated by July 25th, 2000.
Wisely, the extraordinary session of the General Assembly of June 2000 (Copenhagen+5) decided, on the basis of a proposal of the Group of 77, to omit any reference to Global Compact in its final declaration.

IV. One of the results of the strategy designed by the Secretary General is the Fund for a Sustainable Development (GSDF) which has been established by an agreement between UNPD and a group of transnational corporations. The great majority of these corporations are responsible, or share responsibility for political, social, economic as well as gross human rights violations and severe environmental damages. Among such corporations are the British company Rio Tinto; Oracle , AT &T, Ownes Corning and Dow Chemical from the United States, the Swiss/Swedish ABB and the Swiss Norvatis.

The Board of the Fund will be composed of representatives of UNPD and the transnational corporations. Thus the Fund is a private institution within the United Nations system. The transnational corporations, pay a very modest membership fee to the Fund (50,000 US dollars) and they can play, in exchange, a very important role in the decisions of the United Nations organs and agencies, while covering their harmful and wrongful activities under the mask of humanitarian aid (see www.corpwatch.org).

V. The report entitled " Business and Human Rights : A Progress Report" from the Office of the High Commissioner on Human Rights of the United Nations, January 2000, openly confirms such strategy. The Report states: "At the dawn of the 21st century, one of the most significant changes in the human rights debate is the increased recognition of the link between business and human rights... "

The general philosophy underlying the report is that good business and human rights mutually reinforce and that, as a consequence, it is appropriate to privatize the promotion of such rights. So, why not the rights themselves?

VI. The implementation of the strategy to confer an increasingly larger share of power to the transnational corporations in the United Nations began in 1993 with the suppression of United Nations bodies which had been trying to establish a social control over the activities of the transnational corporations. One of those bodies was the Commission on transnational corporations established by ECOSOC resolution 1913 (LVII) in December 1974.

It was composed of 48 member States and it had as a priority the investigation of activities of transnational corporations and the elaboration of a code of conduct for transnational corporations, such code was never adopted.

In 1974, ECOSOC, by its Resolution 1908 (LVII), established the Center for Transnational Corporations (CTC). CTC was created as an autonomous organ of the United Nations Secretariat. In

1993, the Secretary General of the United Nations decided that CTC would become the Transnational and International Investment Division within the United Nations Conference on Trade and Development (UNCTAD).

On the other hand, through resolution 1994/1 of July 14 1994, the Economic and Social Council decided to transform the Commission on Transnational Corporations into a Commission of UNCTAD considering the "change in orientation of the Commission." Such change involved the withdrawal of any attempt to establish a social control over the transnational corporations and the taking up of the question of "contribution of transnational corporations to growth and development."

VII. Further evidence of the process towards placing the system of the United Nations at the service of the transnational corporations is given by the growing intervention of the World Bank into the most diverse aspects of the activities of the United Nations. While the World Bank is formally a specialized agency of the system, in fact it is an instrument of the policies of the transnational corporations and the rich countries (in particular of the United States). The World Bank is openly infringing the norms established in the Charter of the United Nations for the specialized agencies: it remain outside the supervision of the General Assembly and ECOSOC.

VIII. In January 2000, during the inauguration in Davos of the web page www.unglobalcompact.org , the electronic voice of "Global Compact" (the United Nations alliance with the transnational corporations), Mary Robinson, the High Commissioner on Human Rights of the United Nations; Juan Somavia, the General Director of ILO; Klaus Topfer, Executive Director of UNDP; Erick Schmidt, the Executive Director of Novell (Informatics programs corporation) Bill Jordan, the Secretary General of the International Confederation of Free Trade Unions; and Sir John Browne, Executive Director of British Petroleum (BP) were present.

The participation of Sir Browne was shocking, taking into account the "curriculum" of the company he is heading. BP is the major foreign investor in Colombia and it has been accused in the European Parliament by the British representative, Richard Howe, for violation of peasants, indigenous communities and union leaders human rights. Even though, BP denies to have financed paramilitary groups, it recognizes that it provides funds for the Colombian Army, alleging that it has "strictly defensive aim." (see "Colombia: British Petroleum en Guerra contra Sindicatos" from the Union Sindical Obrera de Colombia, Junta Directiva Nacional 2/15/99 www.labournet.org.uk/spanish/1999/coluso.html).

Human Rights Watch stated in January 1999 that BP was an example of the participation of the energy industry in human rights violations (see "The Enron Corporation: Corporate complicity in human rights violations").

BP is distinguished also by its socio-economic "performance": Between 1990 and 1996 BP reduced its personnel from 116.000 to 53,700 and increased its earning from 900 million US dollars in 1993 to 4300 million in 1996 (Quid 98, ed. Robert Laffont, France, p. 1773). In August 1998 BP merged with AMOCO. It was labeled as "the greatest merger in industrial industry." It was "celebrated" with 6,000 layoffs (newspaper El Mundo, Spain 8/12/98).

IX. The common document of the Secretary General, the World Bank, IMF and OCDE, submitted to the General Assembly (extraordinary GA session Copenhagen +5) is one more egregious step towards the implementation of the policy of aligning the United Nations with the rich minority of the planet. This is a challenge to the international community of States represented in the United Nations and to the people of the United Nations as invoked by the Preamble of the Charter.

This policy implies a flagrant withdrawal of the principles of the United Nations as enshrined in its Charter, the Declaration on Human Rights and other international instruments. Art. 100 of the Charter of the United Nations states that the Secretary General represents the UN and responds exclusively to it and does not receive instructions from any other government or authority alien to the Organization.

The international community must react promptly and without ambiguity to the unprecedented degradation of the role of the United Nations in the context of economic, social and cultural rights and the right to development.

Note: The following non-governmental organizations have expressed their support for this statement: Asociación Pro Derechos Humanos de España, Asociación Contra la Cultura Punitiva y de Exclusión Social, de Barcelona, España; Central Latinoamericana de Trabajadores (CLAT); Comisión Latinoamericana por los Derechos y Libertades de los Trabajadores (CLADEHLT); Instituto de Políticas Alternativas para el Cono Sur (PACS) from Brasil; Nuevos Derechos del Hombre, from Argentina; Oficina Jurídica Para la Mujer, from Cochabamba, Bolivia; ECOROPA; Servicio Paz y Justicia, from Argentina and Transnational Resource & Action Center (TRAC), from United States of America.

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(1) In June 2000 the UNDP announced that it canceled plans to create the GDSF, after a year campaing by environmentalists, human rights groups, labor unions and other non-governmental organizations (see www.corpwatch.org/un).

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE QUESTION OF TRANSNATIONAL CORPORATIONS

Joint written statement* submitted by Centre Europe-Tiers Monde,
a non-governmental organization in general consultative status,
and the American Association of Jurists and Pax Romana,
non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 July 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organizations.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE QUESTION OF TRANSNATIONAL CORPORATIONS

I. MANDATE OF THE WORKING GROUP. The Working Group of the Human Rights Sub-Commission on the working methods and activities of transnational corporations (resolution 1998/8) was given a six-point mandate, set out in a logical sequence, to enable it to complete successfully the task entrusted to it.

It is stressed that the Working Group needs to receive the necessary assistance so that it can carry out its mandate in full, which should start with the identification of the subject of its study (the methods, the activities and the problems) and conclude with the making of proposals and recommendations.

In 1999 the provisional agenda was drafted in such a way as to truncate the mandate and anticipate the views of the Working Group (document Sub.2/1999/WG.2/1). In fact, two fundamental activities that the Sub-Commission had entrusted to the Working Group had disappeared from the provisional agenda: to identify and examine the subject of its study and to make recommendations and proposals, which correspond to paragraphs (a) and (d) of Sub-Commission resolution 1998/8. The Working Group itself put the missing topics back on the agenda. Moreover, this provisional agenda included under item (d) two sub-items ((i) and (ii)) which gave precedence, as a solution to the problems to be considered by the Working Group, to voluntary codes of conduct drawn up by the transnational corporations themselves and to pseudo-inspections carried out by some NGOs or so-called NGOs or consultant companies, also transnational, engaged by the very corporations that are submitting to these inspections.

The secretariat of the Working Group is therefore urged to draw up the agenda for the Working Group's sessions in the year 2000 in accordance with the mandate given by the Sub-Commission, without anticipating the decisions to be taken by the Working Group.

II. NEED FOR THE WORKING GROUP TO IDENTIFY THE SUBJECT OF ITS STUDIES. The Working Group needs to identify the subject of its studies, which is on the one hand the transnational corporations as such and on the other hand the effects of their activities on human, civil, political, economic, social and cultural rights and the right to development. This implies a large-scale study in view of the wide range of activities of the transnational corporations covering the most varied and essential aspects of human life: work, food, health, education, culture, information, environment, social, political and recreational activities, etc.

A non-exhaustive list of the topics to be studied could comprise the effect of the activities of transnational corporations on:

(1) Labour law and the right to work;

(2) The right to information (to information in general and to scientific and technical information);

(3) The right to health (drugs, vaccines and the effects of the chemical and pharmaceutical industry in these areas);

(4) The right to natural resources (water, petroleum, etc.);

(5) The right to adequate and healthy food (e.g. genetically modified organisms);

(6) Biogenetics: can the genetic heritage and the genetic code be privatized?

(7) The right to national identity and culture;

(8) Civil and political rights;

(9) The influence of the transnational corporations on the United Nations system, the European Union and other intergovernmental organizations;

(10) The environment (polluting industries, toxic wastes, etc.);

(11) Women's rights;

(12) The rights of the child;

(13) The right of peoples to self-determination;

(14) Transnational corporations and financial capital. At present, the large transnational corporations are involved both in production activities and in speculative financial activities. This latter aspect basically takes two forms: one is the purchase of shares in such corporations by institutional investors, i.e. managers of pension funds, insurance company funds, etc., who then intervene in the decisions of the corporations in order to ensure that their investment produces the anticipated high income, even to the detriment of human rights. The close relationship can now be seen between the announcement of dismissals by a company and the immediate increase in the value of its shares based on the expectation of greater profitability. The other way in which the transnational corporations have entered the sphere of speculative financial capital is simply by investing part of their profits in speculation instead of in production.

(15) Closely related to the previous point is the issue of the relationship of the transnational corporations - as such or through their senior management - with financial crime, through the laundering of money derived from criminal activities such as drug trafficking, exploitation of prostitution, illegal arms trafficking, corruption of public and private officials, etc. Some judges and prosecutors specializing in this subject believe that a high proportion of large corporations are involved in financial crime and that almost all the offences committed go unpunished.[1]

(16) Finally, the role of the transnational corporations in political, economic and social corruption should be studied.[2]

III. NEED TO STUDY THE VARIOUS LEGAL ASPECTS. Analysis of the compatibility between the various international human rights instruments and the activities of the transnational corporations naturally raises the question of the legal framework in which the latter operate. For this purpose a number of basic premises need to be set out:

(1) National communities and the international community are communities subject to the rule of law, that is, they are established on legal foundations (national and international standards) that are binding on all persons, both natural and artificial, regardless of the extent to which these foundations are respected in practice.

(2) The transnational corporations are artificial persons and as such they are the subject and object of law. Thus the legal standards are also binding on the transnational corporations.

The managers of the transnational corporations are natural persons, and obviously the legal standards in force are also binding on them. The question therefore is to establish in what way the legal supervision of the transnational corporations and their managers is applied in terms of legal personality, applicable jurisdiction, civil and criminal liability, etc., so that the Working Group can make well-considered and well-founded proposals to the Sub-Commission. This may require the extension and possibly the widening of the Working Group's mandate.

IV. NEED TO RECOGNIZE THAT THE EXISTING STANDARDS ON HUMAN RIGHTS ARE BINDING ON THE TRANSNATIONAL CORPORATIONS AND TO STUDY THE POSSIBILITY OF DRAFTING SPECIFIC STANDARDS, ALSO OF A BINDING NATURE. There are many standards in force with peremptory force, either because they are binding (covenants, conventions, etc.) or because they form part of the jus cogens, which are universally applicable to human rights in general, to civil and political rights and to economic, social and cultural rights. These standards are certainly applicable without exception to the transnational corporations by virtue of the principle of equality before the law. The principal attempt to create a specific international legal framework that is binding on the transnational corporations (code of conduct and code on transfer of technology) have not been successful. There is only the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of the International Labour Organization (the monitoring mechanisms of which need to be updated and strengthened) and a few other non-peremptory instruments.

An exception to this legal vacuum of binding standards, with specific reference to corporations, is the Convention on Discrimination against Women, article 2 (e) of which states: "... to take all appropriate measures to eliminate discrimination against women by any person, organization or ENTERPRISE" (emphasis supplied). And of course there is article 29 of the Universal Declaration of Human Rights which stipulates that "everyone" has duties to the community.

It is therefore appropriate to reconsider the possibility of introducing one or more compulsory codes of conduct for the transnational corporations, which could take the form of international conventions.

Experience has shown that the efficacy of voluntary codes of conduct is very limited and sometimes temporary and that in most cases the corporations adopt them basically for image reasons ("greenwash"), which may even help them to win new markets. In any case such codes cannot be a substitute for binding standards.[3]

It must be borne in mind, however, that there are other peremptory international instruments which, although they do not refer specifically to transnational corporations, deal with activities that are generally characteristic of such corporations. They are concerned mainly with the protection of the environment, and include the Rio Declaration of 1992, which has the force of jus cogens, the Basel Convention of 1989 and the Bamako Convention of 1991 on hazardous wastes and their transport and disposal, the 1992 Helsinki Convention on the Transboundary Effects of Industrial Accidents, the 1993 Lugano Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (in which the civil liability of whoever carries out such activities is recognized), etc.

V. MECHANISMS FOR IMPLEMENTING THE STANDARDS. There are various mechanisms for monitoring and implementing the human rights standards, none of which is specifically designed for the transnational corporations, but which could play a role in that respect: the national courts, the committees of international covenants and conventions, the Inter-American Court of Human Rights, the European Court of Human Rights, the Luxembourg Court, the international courts of arbitration,[4] and the International Court of Justice which in 1993 created a Chamber for Environmental Matters.[5]

It is true that only States can be parties to some of these mechanisms, but that does not prevent States from answering for the activities of private persons who act within their jurisdiction or have their headquarters within their territory.

Some lawsuits against large transnational corporations are currently in progress in various national courts, for damage to the environment resulting in serious consequences for the health of the population and/or the health of the workers, for infringement of the principle of preventive measures, for financial offences, etc.[6]

Unfortunately, the Statute of the International Criminal Court approved in Rome in 1998, which established an important precedent by creating an international court for natural persons accused of certain serious offences, did not include artificial persons or offences against economic, social and cultural rights.

VI. MONITORING MECHANISMS IN THE FIELD OF THE COMMISSION ON HUMAN RIGHTS. Finally, the Working Group could propose monitoring mechanisms in the field of the Commission on Human Rights, which might consist in a working group of the Commission on transnational corporations, along the lines of the Working Groups on Enforced Disappearances and on Arbitrary Detention, or a special rapporteur.

VII. CONTRIBUTION BY THE NGOs. As a contribution to the fulfilment of the mandate of the Working Group, the American Association of Jurists, the Centre Europe-Tiers Monde and Pax Romana published a 150-page volume in July 2000 entitled "Sociétés transnationales et droits de l'homme" containing contributions on the subject by various authors.

Notes

[1] See: Eva Joly, "Notre affaire à tous", Les Arènes, Paris, June 2000, especially pp. 161, 174, 182-183, 202-205, 208 and 209. See also: "Noir, gris, blanc", Les cahiers de la sécurité intérieure No. 36, Institut des Hautes Études de la Sécurité Intérieure, La Documentation Française, Paris, 1999.

[2] Ibid.

[3] See the articles on the subject by Peter Utting and Alejandro Teitelbaum in "Sociétés transnationales et droits de l'homme", published by American Association of Jurists, Centre Europe-Tiers Monde (CETIM) and Pax Romana, Geneva, July 2000, 150 pp. See also: Peter Utting, "Business responsibility for sustainable development", UNRISD Occasional Paper 10, January 2000; and J. Diller, "A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor initiatives", in International Labour Review, 1999, No. 2, International Labour Office, Geneva.

[4] For example, there is the well-known arbitral award in the "Trail Smelter" case: liability directly includes that of the State where the activities are carried out and that of the enterprise conducting the harmful activity.

[5] See: "Prevención y sanción de las violaciones a los derechos ecónomicos, sociales y culturales y al derecho al desarrollo: el problema de la impunidad", 145 pp., published by American Association of Jurists and Centre Europe-Tiers Monde, Geneva, August 1998.

[6] Examples of such lawsuits are: in New York against Texaco (for environmental damage in Ecuador); before District 212 of the County Court of Galveston, Texas, against the manufacturers and users of a pesticide in the banana plantations of Costa Rica, Honduras and Nicaragua which caused the sterility of 1,500 workers: Shell Oil Company, Dow Chemical Company, Occidental Chemical Corporation, Standard Fruit Company, Standard Fruit and Steamship Co., Dole Food Company, Inc., Dole Fresh Fruit Company, Chiquita Brands Inc. and Chiquita Brands International; in Brazil against Monsanto for the use of genetically modified soya in violation of the principle of precautionary measures; in India and the United States of America against Union Carbide for the Bhopal disaster; and in courts in Paris against the management of Eurotunnel and Elf for financial offences.